Justice of the Peace
and
LOCAL GOVERNMENT REVIEW

Saturday, March 26, 1955 Vol. CXIX. No. 13

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by **A. C. L. Morrison, C.B.E.**

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The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note:* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

COUNTY BOROUGH OF BIRKENHEAD

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors having considerable Local Government experience for the appointment of Deputy Town Clerk.

The terms of the appointment are in accordance with the Recommendations of the Joint Negotiating Committee for Chief Officers and other Officers of Local Authorities and the salary will be within the range £1,517 10*s.* 0*d.* to £1,855. The commencing salary will be fixed according to the successful applicant's experience.

The appointment is superannuable subject to medical examination and is terminable by three months' notice on either side.

The successful applicant may be required to accept the appointment of Deputy Clerk of the Peace but no additional salary will be paid.

Applications, stating age, experience and qualifications together with the names of three referees should be delivered to me in envelopes endorsed "Deputy Town Clerk" not later than Wednesday, April 13, 1955.

Canvassing, directly or indirectly, will disqualify.

DONALD P. HEATH,
Town Clerk.

Town Hall,
Birkenhead.
March 19, 1955.

BOROUGH OF MIDDLETON

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors with experience in municipal law and practice for the above appointment at a salary of £1,087 per annum rising by annual increments of £35 to £1,221 per annum. The successful applicant will be required to pass a medical examination.

Applications, stating age, full details of experience and qualifications, and the names and addresses of three persons to whom reference can be made, are to be sent to me not later than Saturday, April 9, 1955.

Canvassing, directly or indirectly, will disqualify.

FRANK JOHNSTON,
Town Clerk.

Town Hall,
Middleton, near Manchester.
March 18, 1955.

Second Advertisement

CITY OF BIRMINGHAM

Appointment of Assistant Chief Constable

THE Watch Committee of the City of Birmingham invite applications from persons having previous police experience for the above appointment which will be made pursuant to the terms of the Police Regulations and the Police Pensions Act, 1948. The person recommended for appointment will be required to pass a medical examination.

The salary upon appointment will be £1,750 per annum rising by annual increments of £50 to a maximum of £1,900 with residence or a suitable allowance in lieu.

Applications, giving particulars of qualifications, police experience and other essential details, including the names and addresses of three persons to whom reference may be made, with a present-day photograph and covering letter in the applicant's own handwriting, must reach me not later than first post on Saturday, April 9, 1955, at the Council House, Birmingham, in envelopes marked "Assistant Chief Constable."

Canvassing in any form will disqualify.

J. F. GREGG,
Town Clerk.

March 11, 1955.

ESSEX MAGISTRATES' COURTS COMMITTEE

APPLICATIONS are invited for the appointment of Assistant to the Clerk to the Justices at Epping, Harlow and Ongar. Applicants should have a good knowledge of the work of a Justices' Clerk's Office and be capable of taking Courts (if necessary) without supervision. Preference will be given to a candidate who is a competent shorthand-typist.

The salary will be between £560 and £640 per annum, according to experience. The grading is now under review.

The appointment is superannuable, and the person appointed will be required to pass a medical examination.

Applications, stating age, qualifications and experience, together with the names of two referees, should reach the undersigned not later than 14 days after the appearance of this advertisement.

W. J. PIPER,
Clerk of the Essex Magistrates' Courts Committee.

Office of the Clerk of the Peace,
Tindal Square,
Chelmsford.

BOROUGH OF BARRY

Conveyancing and Common Law Clerk

APPLICATIONS are invited for the post of Conveyancing and Common Law Clerk at a salary in accordance with Grade A.P.T. I of the National Scales of Salaries (£500×£20—£580). Candidates should be capable of undertaking Conveyancing and Common Law work with nominal supervision.

Forms of application, and further particulars, may be obtained from the undersigned to whom completed forms should be returned not later than Saturday, April 2, 1955.

J. CLEMENTS COLLEY,
Town Clerk.

Town Hall,
Barry.

CITY OF CAMBRIDGE

County of Cambridge

THE Probation Committees of the above City and County are desiring to make an addition to their present staff of a third Full-time Male Probation Officer and invite applications for such post.

The appointment will be subject to the Probation Rules, 1949 to 1954, and the salary will be in accordance with such Rules and subject to superannuation deductions. The successful applicant may be required to undergo a medical examination.

Applications to be sent to the undersigned, together with the names of two referees, not later than April 9, 1955.

C. A. G. HARDING,
Clerk to the Justices.

The Guildhall,
Cambridge.

BOROUGH OF BEXLEY

Assistant Solicitor

APPLICATIONS are invited for this appointment under N.J.C. service conditions. Salary £690×£30—£900 per annum according to experience, plus "London Weighting" allowance.

Forms of application, with conditions of appointment, may be obtained from the undersigned, to whom completed forms endorsed "Assistant Solicitor" must be returned by Wednesday, April 13, 1955.

Canvassing will disqualify.

ARTHUR GOLDFINCH,
Town Clerk.

Council Offices,
Bexleyheath, Kent.

COUNTY BOROUGH OF DARLINGTON

Assistant Solicitor

APPLICATIONS are invited for the above appointment at a salary in accordance with age and experience within the current N.J.C. salary scale namely £690×£30—£900 per annum. Previous experience in the office of a local authority not essential. No Council housing accommodation is available. Applications, giving the names of two referees and endorsed "Assistant Solicitor," must reach me before noon on April 16, 1955.

H. HOPKINS,
Town Clerk.

11, Houndgate,
Darlington.

Justice of the Peace and LOCAL GOVERNMENT REVIEW

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NOTES OF THE WEEK

Onus of Proof

It was decided in *R.* v. *Oliver* [1943] 2 All E.R. 800; 108 J.P. 30, that where the right to do something depends on the possession of a licence or other authority, the onus of proving the existence of the licence or authority is upon the defendant in any proceedings against him. In many instances the fact of the existence of a licence might be peculiarly within the knowledge of the defendant, and difficult or even impossible for the prosecution to negative. Common sense requires that the law should be made to work, and there is no hardship on the defendant if he is put to the proof.

In *John* v. *Humphreys* (*The Times*, March 11) the Divisional Court held that when a motorist is summoned for driving without a licence it is not necessary for the prosecution to do more than prove that he was driving on a road, and that it is for the defendant to prove that he had a licence. The defendant had in that case written a letter to the court admitting the offence, but that could not be accepted as a plea of guilty, and the justices thought that the police should prove a *prima facie* case of absence of a licence.

The Lord Chief Justice said that the point raised was, so far as he knew, novel. He observed that there was no danger that the police would summon a motorist simply because they saw him driving unless they had reason to suspect he was not licensed.

If the proposition as to onus of proof and its possible consequences seemed startling at first sight, the answer is that, as the Lord Chief Justice indicated, the police can be trusted to act reasonably. Of course, if they did not, they might have to pay substantial costs.

Russian Prisons

Mr. D. N. Pritt, Q.C., who was one of a group of lawyers who visited Russia in September, 1954, has contributed an article entitled "*Prisons*" *in the U.S.S.R.* to the *Anglo-Soviet Journal*.

Apparently, what we should call a minimum security prison receives most of the offenders and the closed prison takes only incorrigibly difficult convicts. In Western Europe there is still a good deal of controversy about the merits of the closed and the open prison, but, says Mr. Pritt, the Soviet Union has long ago decided in favour of the wide open institution, and it has, of course, no difficulty whatever in finding work for its convicts in the production of normal saleable goods by normal factory methods; the absence of unemployment and the steadily increasing public demand for consumer goods remove all these problems.

Mr. Pritt describes a "colony" which he visited 25 miles from Moscow. There is plenty of ground, and in the colony live and work between 700 and 800 male convicts guarded by no more than 15 guards, five on duty at a time, and armed only during the night. The food, it is said, is ample, nourishing and tasty, better than that in most factory canteens in Britain. Classes and correspondence courses provide opportunities for the education of those who are backward.

In this country it is constantly being said that prisoners generally do not work hard enough and that their work is not sufficiently productive. Admittedly, the question presents certain difficulties. Mr. Pritt says that in the colony which he visited the men were working pretty hard in the workshops. "In this way, a prisoner determined to pull himself together and make good may easily find himself free after less than half his sentence, in terms of time he has served." Further, if the colony authorities think the prisoner deserves to be released, application may be made to the court, which has power to grant conditional release.

Punishments appear to be very mild, and largely in the hands of a "comradely court." The prisoners themselves impose such punishments as a public reprimand or some small penalty.

A prisoner may receive three visits a week and correspondence is unlimited. A prisoner with a good record of behaviour may have a visit from his wife for a day or a week-end, and they are given a room.

Quite a number of prisoners, says the article, keep in touch with the colony and report how they are getting on. A return to crime is said to be very rare.

A Juvenile Colony

A visit was also paid to a colony for juveniles, which is obviously well equipped and offers many opportunities for sport and other recreation as well as for work. It is largely self-supporting. The colony, together with a free population employed in connexion with it, forms a kind of village, and the juvenile offenders mix freely in their spare time with both the adult members and the children of the large free population, and shop in the same large shop.

Visits and correspondence, including parcels, are wholly unrestricted. They, too, have their own elected "boys' council" for organizing colony activities and for disciplining recalcitrant members.

The boys are paid for the factory work they do, when their education gets as far as doing this work, at the full outside rates; there are deductions for their keep, and they have free disposal of the balance.

Stealing in Prison

One of the discomforts of prison, to the sensitive at all events, must be the deprivation of personal belongings including clothing, for which prison clothes must be substituted. The prisoner has at least the consolation of knowing that when he is released he will have his property returned intact, it having been kept safely for him.

Until a week or so ago we had not heard of a case in which a prisoner on release or transfer was in the unfortunate position of learning that some of his property was missing. It must happen very rarely, but a case at Bedford revealed the theft of an overcoat by one prisoner from another. It happened thus. A man was admitted without an overcoat in his possession, and that fact was duly recorded in the reception office register. Some time later another man was admitted who had an overcoat, which was entered against his name in the normal way. The first prisoner, who had been employed in the reception office, was subsequently transferred to an open prison, where he arrived with an overcoat. When it became the turn of the second prisoner to be transferred, it was found that the register had been altered, and his overcoat was missing. Apparently it was after the first prisoner had been released that he was interviewed by the police, and admitted taking the coat.

As the chairman of the bench remarked, prison is a most unusual place in which to steal. The court took a merciful view, and put the man on probation for two years. Having had the advantage of open prison treatment, and being now put on probation, he ought to take advantage of his chance. The newspaper report does not say whether the overcoat was traced and restored to the owner, or whether the offender was ordered to pay compensation.

Prison for Drunken Drivers

We see from a report in a Scottish paper that the chief constable of Perth stated recently that cases of persons driving motor vehicles whilst under the influence of drink showed an alarming increase during 1954. The Sheriff referred to this statement by the chief constable and said that the public must be protected. He added that he wanted to make it clear to the motoring community that cases of "drunk driving" would lead to imprisonment if fines and disqualification did not prove effective. The Sheriff had before him a motorist who pleaded guilty to such an offence. It was stated that before getting into his car he was seen staggering about on the pavement, and a police patrol car subsequently followed his car as it "weaved" its way along the road. On his behalf it was stated that he had been to a club dance, that he had a strong head for drink and was very surprised to be stopped by the police.

We refer to this particular report because it gives an example of the kind of case which is all too frequent. How any man who cannot walk straight can be surprised at being stopped when he attempts to drive a motor vehicle it is difficult to understand. Courts show a strange reluctance to sentence "drunken" motorists to imprisonment, and it is even said that some juries show an even stranger reluctance to convict on evidence that many people would regard as conclusive. Whatever may be urged by the defence in mitigation when the accused is in charge of the vehicle but is not actually seeking to drive it, it is not easy to imagine what mitigation there can be when the offence is one of *driving* whilst under the influence of drink. We do not think any defendant who is convicted of "drunken driving" has cause to be surprised if he is sent to prison for his offence.

Bank Rate and Council Rents

The latest rise in bank rate has two things in common with Ceylon's export duty upon tea. First, it raises acutely the question how far the increased charge will be passed on to the final consumer. Secondly, and because of this, it is involved with the prospects of an early general election. The bank rate and the price of tea may thus serve as, at least, a minor consolation to our numerous readers who are officially concerned with the mechanics of the election when it comes. It looks much less likely than it did some weeks ago, that dissolution of Parliament will be sprung upon the country in the first half of this year. More seriously, local authorities and their advisers are daily more concerned about the effect of the increased bank rate on rents of the houses they provide. It is obvious that the cost of borrowing must go up, for local authorities as for commercial borrowers. In a world of old fashioned economics this would automatically mean that rents went up in proportion. No local authority will, however, embark lightly on an increase of rents when there are local elections to be faced. Even if the problem can be deferred until the elections due to be held in the next few weeks have passed, there are, for many local authorities, elections coming again at the same time next year, and the question of rents for new houses is bound to be an issue, just as much as the price of tea will be an issue at the general election. Already the newspapers are printing panic headlines, warning the tenants of local authorities, picked out more or less at the reporter's random fancy, that while some rents will go up by a small sum others will be multiplied threefold. If this last occurs, it will of course not be directly connected with the bank rate, but will be the result of economic causes operating over a period of years, and of the general failure since the second world war to face the problem of economic rent. The plain fact is that large sections of the population, whether they are the tenants of private landlords or of local authorities, are receiving a subsidy, which may fairly be called a form of poor relief, in the shape of being allowed to occupy houses more cheaply than the houses could be provided in a world of free enterprise. The logic of the situation is that rents, like other outgoings of the householder, ought to be put at an economic level and then, if the householder requires help to pay those rents, help should be provided by the National Assistance Board, as it is provided when he cannot obtain food at a price that he can pay. This is the logic of the situation, but we are not so naive as to expect that logic will prevail.

Means tests are unpopular, and this is natural enough: we spoke of this at 118 J.P.N. 479 and 568.

But it is significant that even those local authorities who, politically, might be expected to be most against the idea of means tests are, in the circumstances of 1955, so often coming round. There is some pressure on the Government (and this again is only natural) to bridge the new gap caused by higher rates of interest with a further subsidy; in other words, to deprive the taxpayer of part of the benefit he may expect from the increased bank rate, but we doubt whether this pressure will grow formidable. The most likely solution is a compromise, between logic on the one hand and unlimited largesse upon the other, and, so far as we can see, a family means test for council tenants is the only practical course, however politically dangerous to whichever party has the burden of imposing it. It might be worth while to consider whether any method could be devised by the local government associations, for securing that information obtained from tenants should, like information obtained by the Inland Revenue, be kept subject to the seal of confidence.

Standing Passengers

The debate in the House of Commons upon the Public Service Vehicles and Trolley Vehicles (Carrying Capacity) Regulations, 1954, suggests a new approach to English habits. The first legal provision on the subject, at least in the general law, was s. 13 of the Railway Passenger Duty Act, 1842, which enacted (for the protection of railway interests) that what are now called public service vehicles might not carry a larger number of passengers than would permit each to have a seat 16 inches wide. In substance, though in varying forms, a similar provision has persisted, and even in the wholly different circumstances of today it is regarded as an anomaly that passengers in a tramcar or omnibus (to use the nineteenth century expression) should travel on their feet, for however short a distance. Yet the roads have not been, and cannot in any measurable future be, adapted to the multitude of vehicles that would be required by the standard of 1842. (On suburban railways, it is scarcely pretended that that standard can ever be restored.) The great majority of passengers in London and the other big towns have to reach a central point in the morning and go home after business hours. In country towns and pleasure resorts, including the west end of London for this purpose, there is also a concentrated evening traffic, especially on Saturdays. Staggered hours by as many as possible of the largest employers will, if brought about, supply a partial but ve , valuable answer to the daily rush; this, however, involves co-operation by employed persons, of whom many prefer the more ordinary times, and it cannot meet the full demand. In the debate two main complaints were levied at the new regulations—that they will make it legal for a public service vehicle to carry eight standing passengers, and that they will make it legal to license public service vehicles providing specifically for standing passengers. Upon the first point, the reply of the Parliamentary Secretary of the Ministry of Transport and Civil Aviation was that the eight was no more than a legal maximum, for a vehicle that was built with the ordinary seating, and that it was open to operators, where the trade union representing transport workers so desired, to adopt a lower figure. The figure of five agreed between the two sides of industry in London will not be increased, but in most parts of the country there is no similar agreement. The second main complaint was expressed as being that the regulations would allow " that horrible invention," the " standee " bus to be introduced. This is more important. The word is certainly a horrible invention (let us hope that it will never become popular), but what of the thing?

On the Paris Metro. there is a proportion of carriages built to carry mainly standing passengers. This enables a larger number to be carried at rush hours in each carriage than on London's underground where, in carriages designed primarily for seated passengers, hundreds are crowded for whom there are no seats. The new regulations are not concerned with railway carriages, but the principle is the same in public service vehicles on the roads. In continental towns such vehicles are built deliberately to meet the demand which everybody is realistic enough to admit; in London (and elsewhere in England) they are built on the assumption of 1842 that a seat must be found for every passenger—so that, when this is impossible, the passengers who in fact find room to stand are forced to fit themselves between the seats.

What will be lost if English vehicle builders are allowed to provide for standing passengers specifically? Speaking generally, the passenger travelling at rush hours is not going the whole journey covered by the vehicle; half an hour or so is as much as, or more than, the period he will be standing. As a rule he would, we are sure, be content to do this in a vehicle which can take him, rather than stand in a queue in the rain or snow at a central pick-up point. In fact, if the would-be passenger is allowed to enter an earlier vehicle than he would catch when each of those that came along was restricted to five or even eight standing passengers, his time upon his feet will often be reduced, counting from arrival in the queue to his alighting near his home—and for most of that time he will be sheltered from the weather.

The first object of having regulations to restrict the number of standing passengers is public safety, and we must take it that the expert advisers of the Minister of Transport and Civil Aviation are satisfied that eight is proper. A second object is to protect the conductor against an undue strain in collecting fares. There may be room for ingenuity, in devising other methods for collecting fares; it is the fact that railway tickets have to be bought before the journey, which makes it possible to crowd the London underground trains to capacity while the London omnibus may not carry more than five persons standing. In some continental towns this object is secured in a different way, by giving the conductor a seat beside a barrier which incoming passengers must pass, entering the vehicle at one end and leaving at the other. Such a plan would be contrary to English practice, in that we are not accustomed to the separate entrance door and exit, and the practice of having fares collected by a conductor who moves about among the passengers is long established. This practice is however not prescribed by natural law. It would be worth while to substitute some other plan, if one can be worked out—thus reducing the conductor's difficulties and the risk of loss through oversight or fraud.

Nobody wants to see our public service vehicles swarming with passengers like flies, after the manner of some foreign vehicles, but it does not follow that we have no lesson to learn from other countries. The central consideration is that in our congested towns everybody who has to work wants to get home at night as soon as possible. It must be years before complete remedies mature, even supposing a remedy can be found in the provision of enough new roads, to make practicable the building of more vehicles and increasing the number available at rush hours. Meantime it would be worth while experimenting with vehicles which could be discarded after a few years, if a permanent remedy was found, and during those years would contribute to the comfort of the travelling public by reducing the time wasted on their daily journeys.

THE POLICEMAN AS ADVOCATE

By F. J. O. CODDINGTON, *Stipendiary Magistrate*, 1934–1950

In the *Police Review* for February 11, 1955, an ingenious contributor has put forward what I submit is a fallacious argument to justify the all-too-common practice of permitting a police officer, who has not signed the information, to conduct the prosecution. The *Police Review* on March 4 published a second article exposing and contradicting this fallacy, and therefore one might be inclined to say, "Well, a mistake has been made and corrected—why bother about it?"

The answer is that this controversy has brought to light an irregularity that is being committed all over England, and the sooner it is either stopped *or legalized*, the better. The original article, in the form of a dialogue between two police officers, makes one of them say "You've heard me prosecute in court for years and I have never signed an information. The Super always does that, and no-one has ever objected . . ." A little later the other officer says, "It is really curious how some benches refuse to allow the police to prosecute in cases where they are not the informant, and they are quite adamant that unless the officer who signs the information (or, of course, a solicitor) conducts the case, then no other police officer will be heard unless he is a witness" (*i.e.*, in the box).

There is, I suggest, nothing curious in the correct behaviour of the adamantines. What is curious is that so many courts permit a breach of the unwritten law that no-one is entitled to address the court unless he has some special right to do so.

The original writer's argument is based upon the fact that the Magistrates' Courts Rules, 1952, r. 17 (1), runs: "On the summary trial of an information . . . the prosecutor shall call the evidence for the prosecution, and before doing so, may address the court." He contrasts this with the wording of the civil procedure rule where the complaint and complainant are mentioned, and then says, "I think that recognizes the difference. In the case of informations the prosecutor need not necessarily be the informant."

A careful consideration of the Magistrates' Courts Act, 1952, and the Rules, quickly disposes of this argument. The relevant phrases are (*a*) in the Act, s. 1 (1) "Upon an information being laid before a justice . . . the justice may . . . etc." . . . There is no limitation here as to who may lay the information. There are a certain number of statutory offences, where certain people only can lay the information. I omit these exceptions: but, for all the rest, any person (including, of course, a police officer) may lay the information.

Section 13 (1) and (2). "On the summary trial of an information, the court, after hearing the evidence of the parties, shall convict the accused or dismiss the information." Here nothing is said of the prosecutor or the conduct of the trial. That is left to the Rules.

By s. 99, "The party to any proceedings, before a magistrates' court, may be represented by counsel or solicitor." This applies to both prosecution and defence and such a qualified advocate may, of course, address the court in the case he is conducting.

Now (*b*) turning to the Rules, r. 4 (2) runs, "An information may be laid or complaint made by the prosecutor or complainant in person or by his counsel or solicitor or other person authorized in that behalf." Disregarding civil complaints, this means that the informant may be the prosecutor in person or anyone whom he authorizes in that behalf. It is clear that the words "counsel or solicitor or other person authorized" means not that such counsel or solicitor or other agent thereby becomes the informant or the prosecutor but that on behalf of the informant or prosecutor he does the actual work of laying the information. It is a little difficult to see how this could be done by an agent where the information was laid on oath, but what is clear is that the informant and the prosecutor are one and the same person.

Now we come to r. 17 (1) already quoted, and this must be read in conjunction with the previous sections and rules above mentioned.

It may be asked, why should it matter whether the prosecution is conducted by the informant or by some other police official? I think there are three good reasons. First, by the Costs in Criminal Cases Act, 1952, s. (6), on the summary trial of an information the magistrates' court shall have power to make an order that costs on dismissal of the information are to be paid by the prosecutor to the accused.

Secondly, where there has been a wholly unjustifiable prosecution, the defendant may wish to bring an action for "malicious prosecution." In either of these cases he should not be compelled to look for his money, or for the defendant to his claim for damages, to some police official whose name he does not know and may find difficult to discover. But so long as he can claim against the informant he knows where he is.

Thirdly, the permission of the police officer to conduct the prosecution is a flat breach of the universal common law rule that no-one may address the court unless he has a special right to do so: and he can only have that special right by being informant, defendant, or solicitor or counsel employed by the one or the other. No-one else has any right to address the court in any case without special leave, as *amicus curiae*, which should not be lightly given, and, so far as I know, never is given except to a counsel or solicitor.

All this applies to summary cases. It may shock some courts and some police officers still more to know that as far as the writer knows, even the informant has no right to conduct the preliminary proceedings of taking depositions in an indictable case which is to be tried by a judge and jury in a higher court. These, I believe, must be conducted by a counsel or solicitor. Indeed, the only mention of speeches I can find, is in r. 5 (7) which rules that, in certain circumstances "counsel or solicitor for the prosecution shall be entitled to be heard in reply," *i.e.*, at the end of the hearing; the prosecutor or informant is conspicuously absent from this permission. (One exception, however, is that under s. 5 (2) of the Act, the prosecutor may represent to the court that the attendance of a witness at the trial is unnecessary.)

In the case of an arrest without warrant, there is often no formal information. Under these circumstances, according to *Paley*, in a great number of cases the police charge sheet is by long custom accepted as a sufficient information, and my own experience confirms this. I have not been able to discover any authoritative ruling as to who, in these events, is held to be the prosecutor or informant, but I believe it is customary to state upon the police charge sheet the name of the person arresting, who is practically always a police officer, and I submit that he would be held to be the prosecutor. This fits in with s. 5 (1) of the Act by which the prosecutor must be bound over to prosecute before the higher court, and with r. 6 (2) and form 14, whereby the prosecutor is bound over "to appear at court and there prefer or cause to be preferred a bill of indictment against the accused . . . and duly prosecute such indictment."

Incidentally, this form once more makes it clear that the prosecutor is neither counsel nor solicitor nor any haphazardly selected police officer.

The law on all these matters has not been altered by any recent Act, and remains as before. This is the opinion of *Stone* and *Paley*. The only crumb of comfort I can offer to police officer advocates, not being informants, and to the courts which incorrectly suffer them to conduct prosecutions, is in *May* v. *Beeley* [1910] 2 K.B 722; 74 J.P. 111. But this case is bedevilled by the facts that no objection was taken by the defendant's advocate before the magistrates' court to the advocacy of the police officer, nor was any suggestion made of any unfairness or similar impropriety, and that the appeal was made on a series of purely technical objections without any hint of "merit." Moreover the judgment of the Divisional Court was delivered by Lord Alverstone, the most easy going and untechnical of L.C.J's, and it is difficult to disentangle the *obiter dicta* from the *ratio decidendi*. He appears to have held that where the non-informant police officer advocate was not a witness, was not objected to at the time, and was not unfair, the suggestion that he ought not to have appeared as advocate was not a valid reason for quashing the conviction. The very fact that he would (apparently) have objected to a witness-advocate, which is just what a normal informant advocate (who would be lawfully entitled so to act) would be, hints that he had not clearly grasped the position and that this case might not be followed today in all circumstances. Perhaps I should add that I attach little weight to the judgments in *Webb* v. *Catchlove* (1886) 50 J.P. 795 and *Duncan* v. *Toms* (1887) 51 J.P. 631, which appear to me out of date and out of touch with modern practice.

Finally, may I say that my own long experience of police informant advocates appearing before me was that they were usually so anxious to appear "fair," that their conduct of the prosecution (particularly in cross-examination) was apt to be unduly weak; but, on the contrary, when (as I have very often done) I have sat as a spectator in small town and country courts I have sometimes heard the policeman prosecutor unduly and unfairly press his case. In any event it is so important that the public should have a good opinion of the fair play of the police and an appreciation that there is no domination of the court by the police, and that the court is entirely independent of them, that the less police advocacy there is the better. It is, I submit, a false economy not to employ a professional advocate.

MORE PUBLIC MISCHIEF

[CONTRIBUTED]

Crime is an act punishable by law and crimes tend to increase as self help becomes impracticable. Some crimes were established at common law, but modern crimes are the creatures of Parliament. Only in a national emergency do parliamentary conventions permit a hastening of the normally contemplative and leisurely procedure in the creation of serious crime. And as much parliamentary control as is practicable is applied to misdemeanours created by Statutory Instrument.

But a view persists that, in addition to defined crimes, a class of acts remain established at common law punishable as crimes, and that the courts have the function to define cases brought before them as acts against the public good and punishable as crime. The Crown before the Judicial Committee of the Privy Council recently advanced this view.

A member of the Legislative and Executive Councils of St. Vincent made a statement (not in either of the Councils, where it may have had privilege attached to it, but in the Market Square at Kingstown, St. Vincent), in which he said that the colony's policemen were scheming politically, and storing up a veritable arsenal at headquarters to shoot down the people when they decided to fight for their rights. He had been charged with effecting a public mischief contrary to the common law. His appeal to the Court of Appeal for the Windward Islands and Leeward Islands was dismissed and he appealed to the Privy Council: *Joshua* v. *Reginam* [1955] 1 All E.R. 22; 119 J.P. 61.

Counsel for the Crown said that the authorities showed that long before the dictum of Mr. Justice Lawrence in *R.* v. *Higgins* (1801) 2 Cast 5, it was established that an act might be criminal because it tended to the prejudice of the public, even though it would not have been criminal apart from that tendency; they also showed that this applied both to conspiracy and to acts of individuals.

Lord Oaksey, on the public mischief question, said that it "is one of general importance on which there are conflicting views by judges of great eminence, *e.g.*, *R.* v. *Daniell* (6 Mod. Rep. at p. 100) *per* Holt, C.J.; *R.* v. *Wheatly* (2 Burr at pp. 1127, 1128) *per* Lord Mansfield, C.J.; *R.* v. *Newland* [1955] 2 All E.R. at p. 1071, *per* Lord Goddard, C.J.; and *Kerr* v. *Hill* (1936) S.C. (J.) at p. 75, *per* the Lord Justice General (Lord Normand) and, as it is not necessary to the decision of the present appeal, their lordships do not propose to deal with it."

But there is little reason to doubt which way the Judicial Committee would have decided the question had a decision been necessary in the case. In *R.* v. *Newland*, the Court held that the actions of the individuals in that case (making false declarations about goods, so as to divert them unlawfully from the export to the home market) were indictable only if done in combination with others, and held that the acts of an individual not committed in combination with others were indictable only if they constituted what had been held in the past to be common law or statutory offences; which perhaps rather begged the question. The Court decided that the safe course was no longer to follow *R.* v. *Manley* (1933) 97 J.P. 6, in which there was a charge of public mischief but no charge of conspiracy. That case concerned a woman who had given false information to the police that she had been assaulted and robbed, resulting in much police time being spent in fruitless police inquiry, and exposing individuals to suspicion if they answered to the woman's description of her assailant. In that case, two other cases had been cited to the Court by the prosecution, *R.* v. *Brailsford* [1905] 2 K.B. 730, and *R.* v. *Porter* [1910] 1 K.B. 369 (C.C.A.) and, as the Court pointed out in *R.* v. *Newland*, no mention had been made that in both those cases there was a charge of conspiracy.

Lord Goddard observed in *R.* v. *Newland* that the legislature now is different from the days when Parliament met seldom, and the Court of Star Chamber perforce had to go so far as to declare misdemeanours (though never felonies). He did suggest that the conduct disclosed by *R.* v. *Manley* might be made a summary offence by Parliament.

In *Joshua* v. *Reginam* the appellant's counsel had submitted that, even if the offence of public mischief existed apart from

conspiracy, it did not apply to freedom of speech. Their lordships did go far enough to express the opinion on this, that it was highly undesirable that a prisoner should be tried on counts that he made a seditious speech and also that he effected a public mischief in making the speech. The inevitable inference from this is that public mischief must not be charged in regard to an act of an individual, when the act is covered by the description of a known specific offence.

A charge of public mischief may seem a convenient way of dealing with certain undesirable practices which modern society has thrown up. Unfortunately in some countries that approach has proved too convenient, and has helped on the "Police State." Experience has taught us that the freedom of the subject is a vital matter, as the frequent use of *habeas corpus* procedure shows. The vigilance of Parliament in recent times indicates a preference for specific offences, and what, otherwise, might be thought to be public mischief is dealt with by a number of measures in connexion with prohibition of uniforms in connexion with political objects, prohibition of quasi-military organizations, the maintenance of order on the occasion of public processions, and recently against the carrying of offensive "weapons." Horror comics are now receiving Parliament's attention, providing ample evidence that the legislature is not unsympathetic to the suggestion of the Lord Chief Justice. "EPHESUS."

MENTAL ILLNESS AND MENTAL DEFICIENCY

The Royal Commission on the Law relating to Mental Illness and Mental Deficiency is now concluding the receipt of evidence and must then consider the mass of information and views which it has received. Much of this has been published and shows in some respects a consistency of views on some of the alterations in the law which are thought to be generally desirable although there are naturally some divergences of opinion. A considerable time must necessarily elapse before the Royal Commission can present its report and in the meantime it may be of interest to those who are concerned with the day-to-day administration of the Acts to know of some of the points which have been put forward and particularly those affecting procedure as distinct from recommendations for the drastic alteration of the law. It was useful that at the outset evidence should have been given by the Ministry of Health and the Board of Control and that this should include a statement of the existing law and administrative machinery.

It was pointed out that in spite of the introduction of voluntary and temporary treatment the law still makes it more complicated for patients to obtain treatment for mental illness in the mental hospitals which are specially equipped for the purpose than to obtain treatment in other hospitals or for other types of illness. This is one of the main problems which the Royal Commission has to consider. The Ministry expressed the view that a fresh assessment of the problem is needed which should be based on acceptance of the principles that hospital treatment for mental illness should be freely and easily available for willing patients; that new procedures should be introduced for unwilling patients; and that the administration of mental health services should not differ more than necessary from the arrangements for the other parts of the health services.

On the administrative machinery relating to mental illness, it was pointed out that partly because of the reluctance of many patients to enter mental hospitals and partly because the law forbids their admission except with the formalities associated with the procedure under the statutes, psychiatric treatment is being increasingly provided in other types of hospital, either for in-patients or for out-patients. Some small hospital units, commonly known as long-stay psychiatric annexes, have also been established to receive patients suffering from mental infirmity associated with old age who can be treated and cared for without powers of detention. These annexes may be associated with, though not legally part of, a designated mental hospital and under the supervision of the medical staff of the hospital, but they may alternatively be associated with a general hospital specializing in the care of the aged sick.

Questions have occasionally been raised as to whether there is every necessary safeguard to prevent the possibility of a certified patient being detained longer than is necessary in his own interest. It was pointed out by the Ministry that when it is considered necessary to continue the period of detention of a patient under a reception order which is due to expire, a special report and certificate must be made to the Board of Control by the medical officer, reporting on the mental and physical condition of the patient and certifying that the patient is still of unsound mind and a proper person to be detained. The matter may then be referred to the hospital management committee who must investigate the case and may discharge the patient or give such other directions as they think fit.

LOCAL AUTHORITIES' VIEWS

The Association of Municipal Corporations, in its evidence, pointed out that there is a considerable difference of opinion as to what constitutes a true voluntary patient. If there is a serious shortage of beds it may be easier to deal with a temporary patient than with a certificated one. It may also be easier to refuse admission to a voluntary patient than to a patient admitted on an order. It was emphasized by the association that it is vitally important to ensure that custodian care is only imposed when necessary.

The association suggested that the word "lunacy" should no longer be used in connexion with mental illness and that the expression "person of unsound mind" is also an unhappy one. It was considered that the aim of legislation should be to reduce the processes of law to the minimum consistent with the safety of the public and the health and well-being of the individual patient; and that in all except violent cases or where the public safety is endangered a patient admitted to a mental hospital should be admitted on the single certificate of two medical practitioners, unsupported by a magistrate or, alternatively, the simple request by the patient for admission supported by a medical certificate from his general practitioner; and that primary certification before admission should be abolished. In the view of the association such certification should only follow careful observation in a psychiatric unit or observation ward of a general hospital or a hospital for nervous diseases. The association feel that the system of law relating to the treatment of voluntary patients should be extended as far as possible. The County Councils Association also agree that so far as is practicable it should be the aim to model the services for persons suffering from mental affliction of any kind upon those provided for

persons suffering from other forms of illness or physical handicap. There seems to be general agreement that the position of the senile dement should be improved, and that every effort should be made to avoid formal certification of aged persons.

OLD PEOPLE

The subject of mental infirmity in old people was considered at a recent conference arranged by the London Council of Social Service, when an address was given by the consultant psychiatrist at Westminster Hospital. He mentioned five big groups of mental illness: anxiety state; depressions; delirium of old age; paranoid; and dementias. He stressed the importance of diet and said that in all forms of mental illness it was common for dietary intake to be reduced. The National Old People's Welfare Committee, from its special experience, gave evidence as to its concern about mentally frail elderly people and their needs and drew special attention to the problem of those elderly people who have become mentally frail and who are at present living alone or with relatives, but who require alternative accommodation where some care and attention can be provided. It was suggested also that more might perhaps be done to arrange for the boarding-out of mentally frail old people who do not require mental hospital care. The committee drew attention to the question of advice being available for those looking after mentally frail elderly relatives at home and suggested that more might be done by local health authorities in this connexion under s. 28 (1) of the National Health Service Act.

ATTITUDE OF THE PUBLIC

Pending the publicity which will no doubt be given to the whole subject when the report of the Royal Commission is available it seems that more might be done in the way of educating the general public on the work now being done in the mental hospitals. It was suggested, for instance, in the last annual report of The Retreat, York, that public opinion still believes that a mental hospital is a kind of " snake pit " and that some people seem to think that insanity is a kind of " doom."

In an attempt to break down the barrier between mental hospitals and the general public a few mental hospitals hold what may be called an " open day " such as in Clifton Hospital, York, where, after the annual meeting, visitors were invited to tour the wards and therapy departments. The hospital management committee felt that the secrecy which has surrounded the work of mental hospitals has caused a widespread misconception of the conditions and the treatment of mental illhealth. More should also be known of the encouraging results of rehabilitation which were reported at the last meeting of the World Federation of Occupational Therapists. Another way in which help can be given is through therapeutic clubs. There was a description in a recent issue of the *Sunday Times* of a new club at University House, Bethnal Green, which is the eighth in London established and managed by the Institute of Social Psychiatry. A psychiatrist and a social-therapist are associated with each club. Some of those who attend regularly have been in mental hospitals and others might have to go there if the clubs were not available.

CO-ORDINATION OF SERVICES

The way has been shown in Oldham to a complete co-ordination of the mental services following the appointment of a consultant psychiatrist for the area hospital group. Social workers employed in the mental health department undertake all the social work in connexion with the psychiatric unit of the general hospital and act under the direction of the medical officer of health and the consultant psychiatrist who has been appointed on the staff of the health department. There are mental health visitors who act also as duly authorized officers. Stress is laid on the importance of home care and out-patient treatment. Patients are admitted to hospital as a last resort and only in exceptional circumstances without consultation with the consultant psychiatrist. The hospital management committee is gradually developing and extending the psychiatric out-patient department and a limited number of selected patients are admitted for day care. This procedure has resulted in a reduction in the number of persons admitted to the mental hospital and there is no difficulty in arranging urgent admissions.

This is a subject on which some lessons can be learnt from overseas and particularly from Holland. The Amsterdam scheme was explained at a lecture arranged by the National Association for Mental Health, by the professor of social medicine who is also director of the Amsterdam city public health service. He said that when he was appointed 25 years ago he was convinced that about 10 *per cent.* of those in the mental hospital, although mentally ill, could be discharged if a home could be found for them. He established a rule that all medico-legal measures should be the responsibility of the city psychiatrist and that no admissions should be arranged without his approval. It was also established that no patient should be sent either to a clinic or a hospital until his case had been investigated by the psychiatrist. There is a psychiatrist for each sector of the city together with two or more psychiatric social workers, and a 24 hours' service is maintained. Each team has about 400 patients under supervision. These arrangements have had an unqualified effect in keeping the number of hospital admissions to a minimum.

MENTAL DEFICIENCY

It was pointed out in the evidence to the Royal Commission by the Ministry of Health that mental defectiveness is probably the only medical condition or diagnosis which Parliament has attempted to define by statute. The respective diagnoses of defectives were examined in detail. It is important to distinguish between children reported as ineducable and those classified as educationally sub-normal. The latter attend special schools within the education system and do not come under the Mental Deficiency Acts unless at any stage it is decided that they are incapable of receiving education any longer.

The Association of Municipal Corporations expressed the opinion that certification of mental defectives should be regarded as a last resort and should usually only be necessary for imbeciles and idiots. It was suggested that it would be helpful if there were greater co-operation between the police and local authorities and that the police should be required to supply information, which they have received, to the certifying medical officer when he is examining a defective with a view to certification. In return, the local authority should supply the police with a list of ascertained defectives in order that, when a defective is charged with an offence, there may be prior consultation between the police and the officers of the local authority.

It was mentioned in the evidence of the County Councils Association that difficulties have arisen in connexion with s. 2 (1) (*b*) (i) of the Mental Deficiency Act, 1913, in cases where a defective is in the care of, for example, a home for unmarried mothers. Doubts have been expressed whether such a defective can be said to have been " found neglected, abandoned, or without visible means of support." It was suggested that these difficulties could be overcome by adding the words " or requiring care, supervision or control for the protection either of themselves or of others." As to the procedure for hearing petitions the association believe it to be the usual practice to inform the parents or guardian of their right to be present when a petition is presented, but suggested that this should be made a statutory obligation. The County Councils Association consider that the

provisions of s. 15, whereby an alleged defective can apparently be detained in a place of safety for an indefinite period, are open to criticism and should be modified, because although the section contains the qualifying words " until a petition under this Act can be presented " in practice no petition can be presented until a vacancy in an institution is available for the individual concerned.

In January, 1952, the Minister suggested to local health authorities that under schemes made under s. 28 of the National Health Service Act they might arrange for the temporary accommodation of defectives, especially children, in mental deficiency hospitals or other suitable places in times of sudden emergency at home, such as illness. These temporary admissions are notified to the Board of Control but there are no other formalities. Seven hundred and thirty-six such temporary admissions were arranged in 1952 and 1,201 in 1953. On the matter of visiting patients the Association of Municipal Corporations suggested that the power of local authorities to arrange for their members to visit mental defectives in institutions, which was taken away by the National Health Service Act, should be restored.

Some regional hospitals boards have contracts with approved homes to provide accommodation for defectives who have been placed on hospital waiting lists by local health authorities and who are considered suitable for care without detention. Recently a few local health authorities have considered the possibility of themselves providing residential hostels for defectives to provide short-term care, to provide for occupation and training, or to provide a home for defectives working in the community. Some local authorities are still accepting into accommodation provided under the National Assistance Act, defectives who are capable of living in the community not under detention but who have no home in which to live.

THE EDUCATION INSPECTORATE

The duty of inspecting schools, and of advising on educational problems generally, falls on Her Majesty's inspectors of schools and these officers constitute the Ministry of Education inspectorate. The duties so ably performed by these officers, who are invariably drawn from the ranks of the teaching profession, can best be explained by reference to the Education Act, 1944. Thus under s. 10 the Minister of Education is authorized to prescribe the standards to which the premises of schools maintained by local education authorities are to conform ; it is the duty of a local education authority to secure that the premises of every school maintained by them conform to the standards prescribed for schools of the description to which the school belongs ; and it is provided that the Minister may, in certain extenuating circumstances, direct that the school premises shall be deemed to conform to the prescribed standards if in lieu they conform to such other requirements as may be specified. The duty of inspecting school buildings in accordance with these statutory directions is one of the most important functions of Her Majesty's inspectors of schools. Where large local education authorities have their own inspectorate, as in the case of the L.C.C., inspections are arranged in conjunction with the authority ; thus on the average a London school will be inspected twice in 10 years, once by a Ministry inspector and once by a council inspector five years later. The Ministry inspector's report is sent to the local education authority for comment and any necessary action ; the report is ultimately discussed at a meeting of the school governors or managers which the inspector is invited to attend. As will be appreciated, it has not always been possible to implement inspectorial recommendations on educational building work during the first post-war decade. For this reason, Ministry inspections of local education authority schools have been criticized in some quarters as time wasting and useless. It is emphatically submitted that this view is unsound and unwarranted, being based on a complete misunderstanding of inspectorial functions. An inspector's report should depict the ideal situation and will therefore make recommendations in that light. Any lowering of standards would be disastrous and the fact that all recommendations cannot be immediately implemented will not prevent their gradual realization in the fullness of time. In this way the Ministry inspectorate encourage teachers and administrators to aspire to the ideal in education. For practical purposes, as has already been observed, the Act does provide for exemptions from prescribed standards in some cases, but an inspector would nevertheless feel it his duty to make recommendations where they have not been achieved.

In addition to the supervision of local education authority schools, provision is also made, under Part III of the Education Act, 1944, for the registration and inspection of independent schools. Until recently this part of the Act had hardly been operative but the Ministry of Education has made a great effort to solve its staffing problems in this respect so that an outline of the statutory provisions may prove interesting. Thus provision is made for the appointment of a registrar of independent schools to keep a register of all independent schools, which shall be open to public inspection at all reasonable times and for the registration of any independent school of which the proprietor makes application for the purpose. No registration will be made in the case of proprietors who have been disqualified under an order and registration will be provisional only until the Minister gives notice that it is final, which will only be done after a satisfactory inspection. Provision is made for exemption from registration in certain cases (where the Minister is satisfied that he is in possession of sufficient information) and for penalties for contravention of this part of the Act. Procedure is laid down with regard to complaints on the grounds of school premises, inadequate or unsuitable accommodation, inefficient instruction and unsuitable teaching staff (including the proprietor). A person having a notice of complaint served on him may appeal to an independent schools tribunal, whose members are drawn from a legal panel appointed by the Lord Chancellor, and from an educational panel appointed by the Lord President of the Council. Tribunals must afford all parties concerned an opportunity to be heard and may order that the complaint be annulled, order the school concerned to be struck off the register, or make certain conditional orders requiring the school to be brought up to standard in specified respects. Such orders may be made by the Minister if the complaint has not been referred to a tribunal. Penalties are provided for in the enforcement section and provision is made for removal of disqualifications if there has been a change of circumstances. One of the difficulties in implementing Part III of the Act has of course been that so many local education authority schools have not been brought up to the prescribed building standards. It would, of course, be inequitable to order the proprietor of an independent school to improve his premises if they are in fact superior, or at least equal to, those of neighbouring local authority schools. Section 77 of the Act, which deals with the inspection of educational establishments, defines an educational establishment as " a school, a county college, any establishment under which a scheme of further education made and approved under this Act

is used for further education, and any training college or other institution . . . maintained by a local education authority ; and if the persons responsible for the management of any institution which is not an educational establishment . . . request the Minister or any local education authority to cause an inspection of that institution to be made . . . the institution shall, for the purposes of that inspection, be deemed to be also included within that definition." It can thus be seen that the net is cast very wide, including, for example, such institutes of further education as recreational institutes, men's (and women's) evening institutes, day continuation schools, colleges of commerce, languages and law and voluntary settlements. It is thus recognized that it is necessary to inspect the work of part-time and visiting teachers as well as that of the full-time teachers in day schools. For this reason the work of the Ministry of Education inspectorate is divided between primary, secondary and further education, with further sub-divisions in each section. It is not surprising, therefore, that the Act goes on to authorize not only the appointment of inspectors on the recommendation of the Minister but also the appointment of assistant inspectors. Finally, the section states that any local education authority may cause an inspection to be made of any educational establishment maintained by the authority, and such inspections shall be made by officers appointed by the local authority.

It is noteworthy that in this respect the Act is permissive, not mandatory, and it is therefore left to the discretion of a particular local education authority whether or not to establish its own local inspectorate. The organizations of those local education authorities which have done so vary considerably but it would perhaps be instructive to examine the inspectorial arrangements made by the L.C.C. In the first place, there is a chief inspector whose status is only slightly inferior to that of the education officer himself and in fact the present education officer was formerly chief inspector (the previous education officer was one of His Majesty's inspectors of schools prior to *his* appointment). The chief inspector co-ordinates the work of the inspectorate and acts in an advisory capacity towards the education officer and the education committee. There are a number of specialist inspectors, those of senior rank being staff inspectors performing the administrative duties connected with their subject at County Hall. In addition to the ordinary subjects there are specialist inspectors for woodwork and metal work, for example ; and some inspectors may be part-time. Each of the nine L.C.C. administrative divisions has a district inspector attached to it and in addition he or she is a specialist in one of the basic subjects of the schools' curricula (English, French, science, mathematics, etc.). The district inspectors thus divide their time between their divisions and County Hall and their duties are exacting. These duties relate mainly to teaching staff, for the inspectors are the liaison officers between the administrators and the schools. This is not to say that education administrators have little or no contact with the teachers, the reverse being the case ; divisional officers are possibly as well known to headmasters and headmistresses as divisional inspectors. What is meant is that divisional inspectors are the link between teaching practice and method on the one hand and the administrative officers on the other. The inspectors are technical officers representing the teaching profession inside the administrative network. The district inspectors therefore play their part in all teaching staff appointments ; although the final decision is made by the governors and managers of schools in the case of assistant teachers and by the education committee in the case of headteachers, the hand of the inspector is seen (or rather unseen) in the preparation of short-lists of candidates for interview. In addition to his work at headquarters, therefore, the district inspector must get to know as far as humanly possible the headteachers, first assistants and assistant teachers of the 100-odd schools in his division. All disciplinary questions affecting teaching staff will be referred to him in the first instance. Finally, a district inspector in London has an important part to play in guiding the discussions of local advisory committees dealing with the vital question of admissions to secondary schools by means of the council's " Common Entrance Test," shortly to be redesignated " Junior Leaving Examination." The local advisory committees are composed of head and assistant teachers whom the district inspector is able to advise in this respect as in others owing to his dual position as a member of the teaching profession and an officer of the county council. It should here be interpolated that the L.C.C. inspectorate is recruited from the teaching profession, the council's practice being the same as the Ministry's. Normally children are admitted to secondary schools at the age of 11 but in exceptional circumstances such as backwardness children may remain at primary schools until the age of 12 on the specific recommendation of the District Inspector.

The writer has often reflected that the qualities required in the Foreign Service must be similar to those needed in education administration. In particular, a district inspector must possess the patience of Job and the diplomatic finesse of a Talleyrand. He must be exceptionally careful and tactful, for example, where any school reorganizations are concerned, for these may displace existing headteachers who may thereby become " unattached " at a lower salary. It should perhaps here be mentioned that teachers have a certain measure of independence, partly because their remuneration is not wholly provided by the local authorities and partly because they are subject to very little interference in the question of curriculum. They are, moreover, represented nationally by some extremely powerful organizations and have a fair representation in Parliament. Coupled with all this, a district inspector is expected to comprehend the teachers' problems more fully than an administrator by the very nature of his appointment.

The establishment of comprehensive schools in London is creating problems in the divisions and these can be thrashed out only at conferences of headteachers at which the district inspector is the linch pin. In London, and elsewhere, opinions are divided on the comprehensive experiment but its arrival has naturally affected the prospects of every other type of secondary school. The district inspector must help headteachers of such schools to adjust themselves to the new circumstances, even to the extent of recommending transfers of some of their children to a new comprehensive school in the area in appropriate cases.

Finally, there is the question of curriculum on which the inspectorate acts mainly in an advisory capacity. As has already been indicated, very little interference in this matter is tolerated in the English educational system. There is an agreed Syllabus of Religious Instruction based on the settlement arrived at in the Education Act, 1944, which is generally regarded as fair to all the Christian denominations. It has been clearly established that governors and managers of schools have no control over curricula but this is not entirely true of the inspectorate, whose influence is mainly persuasive. Thus a good inspector will encourage his secondary modern schools to provide courses leading to the General Certificate of Education where there is a demand for it (this can arise in the case of " late developers," children who gained low marks in the entrance test but blossomed forth a year or two later). In this connexion, lectures and courses for teachers are arranged by the staff inspectors and much work is done in an advisory capacity on books suitable for use in schools and cognate subjects. In this way the London teachers have a magnificent service at their disposal and the majority of them use it to the full, with consequent benefits to the pupils in their charge. Difficulties with regard to particular subjects

are investigated by the appropriate specialist inspector, who may report on the work of an individual teacher.

In conclusion it may be observed that the duties of Her Majesty's inspectors and the local education authority inspectorate may largely coincide. Both types of inspector, for example, may inspect and report on the condition of school buildings; and both may comment on teaching method and practice and the morale of teachers and pupils. In both cases reports may strive for an apparently unattainable ideal. The Ministry inspectors are concerned with Ministry of Education standards and a high level of education in its widest sense generally. The local inspectorates are more intimate and more fully associated with the work of the schools. Both inspectorates work well together in harmony and co-operation and their remedies are wrought mainly by persuasion.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Sir Raymond Evershed, M.R., Birkett and Romer, L.JJ.)

WOODS *v.* WISE

December 7, 8, 9, 1954, March 2, 1955

Rent Control—Premium—Requirement of payment as condition of grant of lease—Sum paid as "commuted rent"—Landlord and Tenant (Rent Control) Act, 1949 (12 *and* 13 *Geo.* 6, *c.* 40), *s.* 2 (1), (5).

APPEAL of plaintiff and CROSS-APPEAL by defendant from West London county court.

By an underlease dated November 4, 1952, the landlord let to the tenant a flat which was a dwelling-house within the meaning of the Rent Restrictions Acts "in consideration of the sum of £850 paid by the tenant to the landlord . . . and of the rent and covenants by the tenant hereafter reserved and contained. . . ." The tenant claimed the return of the sum of £850 as a premium which could not be lawfully required in view of the provisions of s. 2 (1) and (5) of the Landlord and Tenant (Rent Control) Act, 1949. Oral evidence was admitted that the landlord regarded the £850 as a capitalized amount of part of the rent which he could lawfully demand, that the sum represented a discounted calculation, reached by bargaining, of the full amount which the landlord regarded himself as entitled to claim on account of rent, and that the tenant fully apprehended that the landlord had in mind that the sum was "commuted rent."

Held, evidence was admissible to prove the true nature of the transaction; the tenant had failed to establish that the £850 was a premium required by the landlord as a condition of the grant of the lease; and, therefore, the case did not come within s. 2 of the Act of 1949 and the action failed.

Counsel: *Fearnley-Whittingstall, Q.C.*, and *S. N. Bernstein*, for the tenant; *Ahern* for the landlord.

Solicitors: *Cohen & Cohen; J. Rothwell Dyson & Co.*

(Reported by F. Guttman, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Ormerod and Gorman, JJ.)

JOHN *v.* HUMPHREYS

March 10, 1955

Road Traffic—Driving without licence—Onus of proof—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 4 (1).

CASE STATED by Bedfordshire justices.

At a court of summary jurisdiction at Dunstable an information was preferred by the appellant, John, a police officer, charging the respondent, George William Joseph Humphreys, with driving a motor vehicle at Dunstable on August 14, 1954, not being the holder of a licence, contrary to s. 4 (1) of the Road Traffic Act, 1930.

The justices found only that the respondent drove a motor vehicle of which he was the owner on the day and at the place alleged. He did not appear in answer to the summons, but in a letter to the court he admitted the offence and requested the court to accept a plea of guilty. The justices were of the opinion that, before the burden of proving that he was the holder of a licence passed to the respondent, the prosecution must establish a *prima facie* case against him. Driving a motor vehicle on a road was not *prima facie* a wrongful act. Accordingly, they dismissed the information, and the appellant appealed.

Held, that where a statute provided that a person should not do a thing unless he had a licence, the onus was on him to prove that he had one, and the case must be remitted to the justices with a direction to convict.

Counsel: *Peter Lewis* for the appellant. The respondent did not appear.

Solicitors: *Turner & Evans*, for *John Q. Clayton & Co.*, Luton.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

HENDERSON *v.* JONES

March 7, 1955

Road Traffic—Driving without due care and attention—Driver falling asleep—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 12.

CASE STATED by Cheshire justices.

At a court of summary jurisdiction an information was preferred by the appellant, John Henderson, a police officer, charging the respondent, Mabel Jones, with driving without due care and attention, contrary to s. 12 of the Road Traffic Act, 1930.

It was found by the justices that between 6.20 and 6.30 in the evening of September 2, 1954, one Pace was driving his car along the road in the direction of Warrington, the only other traffic in the neighbourhood being a car driven by the respondent in the opposite direction. When the cars first came in sight of each other, each was on its proper side of the road, but as the gap between them narrowed to about 90 *yds.* the car driven by the respondent went over the white line on to Pace's side of the road and headed straight for him. Pace swerved to his left and drove on the grass verge in an effort to avoid a collision, and he had got three-quarters of his car on the grass verge when he was struck on the offside by the respondent's car. The respondent gave evidence that she had fallen asleep at the wheel. The justices dismissed the information, and the appellant appealed.

Held, that, in view of the decision in *Kay* v. *Butterworth* (1945) 110 J.P. 75, which the justices were bound to follow, the appeal must be allowed, and the case remitted to the justices with a direction that the offence was proved.

Counsel: *Robert Hughes* for the appellant. The respondent did not appear.

Solicitors: *Gregory, Rowcliffe & Co.*, for *Hugh Carswell*, Chester.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

R. *v.* WEST KENT QUARTER SESSIONS APPEAL COMMITTEE. *Ex parte* JARVIS

March 3, 1955

Private Street Works—Amendment of resolution—No request by local authority—Amendment by court—Lack of jurisdiction—Private Street Works Act, 1892 (55 *and* 56 *Vict.*, *c.* 57), *s.* 8 (1).

MOTION for order of *certiorari*.

A scheme was put forward by the West Kent county council, under the Private Street Works Act, 1892, to which certain frontagers made objections. The objections were heard before a court of summary jurisdiction at Sevenoaks and the court quashed the scheme. The council appealed to West Kent quarter sessions against the order of the justices. During the hearing of the appeal counsel for the council stated that he was not asking for any amendment of the resolution approving the scheme, but the appeal committee themselves amended the scheme and allowed the appeal. One of the frontagers, who was the respondent to the appeal to quarter sessions, obtained leave to apply for an order of *certiorari* to bring up and quash the order of the appeal committee. By s. 8 (1) of the Private Street Works Act, 1892: ". . . The court may quash in whole or in part or may amend the resolution, plans, sections, estimates, and provisional apportionments, or any of them, on the application either of any objector or the urban authority."

Held, that, where no application had been made for an amendment, the court had no power to make it of its own motion, and that *certiorari* to quash the order of the appeal committee must, therefore, issue.

Counsel: *Patrick O'Connor* for the applicant frontager; *Scrivens* for the respondent council.

Solicitors: *Hewitt, Woollacott & Chown*; *Sharpe, Pritchard & Co.*, for *Gerald Bishop*, Maidstone.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

LOCAL GOVERNMENT SALARIES

A special conference of the National and Local Government Officers Association on March 12 called for drastic revision of salary scales for the administrative, professional, technical, and clerical grades employed in the local government service. The new approach is to be based on the principle of restoring to the staff the purchasing power which was theirs by virtue of the original National Charter of service conditions agreed by the National Joint Council in 1946.

If this is to be achieved, the employers will have to be persuaded to overturn subsequent agreements in which they have themselves concurred as well as two arbitration awards of 1948 and 1952. The association's national executive council bluntly told the conference that such a claim was most unlikely to receive consideration. The view actuating the delegates in rejecting this advice seemed to be that, successive endeavours to improve the original charter so as to maintain the living standards of local government officers and the attractions of the service as a career having proved fruitless, a more thorough-going approach might have more effect.

Mr. A. E. Nortrop, leader of the staff side, described the long and persistent endeavours which they had made to secure improvements in the face of the employers' refusal to consider all-round increases of pay or to extend the global cost of salaries. They had considered the alternative of arbitration but remembered the poor results in 1948 and 1952. They did not accept the agreement reached last summer and operative at the beginning of this year as the end of the road, but at least until that agreement was fully operative they thought it useless to return to the attack. Mr. G. R. Ashton said that the attitude of the employers was growing constantly harder, but the staff side could do no more than use their negotiating skill and keep trying to improve on what they had got.

Linked with the attempt to improve pay standards will be a return to the subject of the recent creation of a two-tier general division, the entry grade to the service. Faced with the difficulty of recruiting staff with the prescribed educational qualifications, the National Joint Council approved a lower pay scale for those not so qualified. This was resented by many critics as infringing the principle of " the rate for the job." It had been accepted by the staff side as an alternative to an *ad hoc* grade for routine work, the difference being that advancement from the lower to the upper section of the division rests not with the employing authority but with the individual who can at any time qualify by passing one of the necessary examinations. Though the grade had been stigmatized as a slave or coolie class, Mr. N. W. Bingham maintained that it was incorrect to use such expressions of a grade from which escape lay through a simple examination.

The conference declined to accept the executive's view on this and instructed them to add to their task of restoring 1946 purchasing power that of abolishing the newly created " lower " general division.

Many references were made in the course of the proceedings to the action which could be taken if negotiations and arbitration failed to vary the employers' " Molotovian attitude." The possibility of strike methods was discussed but no decision was reached. The subject seems likely to come up again at the association's annual conference in June.

After the conference the executive committee spokesmen informed the press that they viewed the differences within the association as tactical only and said that the mandate given by the conference would be accepted. A claim on the lines decided might be before the National Joint Council at their July meeting.

POLICE FORCE STATISTICS, 1953/54

This is the fourth annual statistical return relating to police forces published jointly by the Society of County Treasurers and the Institute of Municipal Treasurers and Accountants. The return relates to provincial police forces, no particulars being included in respect of the Metropolitan and City of London forces, and consists mainly of an analysis of net expenditure per 1,000 population. The total net rate and grant borne expenditure is also expressed as a cost per police officer on average daily strength and there are supporting statistics of authorized establishments and actual strengths of forces.

Averages of net expenditure show costs of £1,259 per 1,000 population and £919 per police officer; there are considerable variations both below and above these figures in individual forces, and while it is obvious that by themselves the figures submitted cannot be used as a basis for action they do nevertheless provide standing joint committees and watch committees with data probably not otherwise available as a starting point when inquiries about police costs are necessary, for instance, when an increase in the authorized establishment of a force is under consideration or a variation of ranks is proposed. There exist considerable deviations from the average population per police officer on authorized establishment; for example, consider these seaside resorts:

County Borough	*Area (acres)*	*Population*	*Authorized Establishment*	*Population per Police Officer on Authorized Establishment*	*Net Cost per 1,000 Population* £
Bournemouth	11,600	139,900	205	682	1,220
Blackpool	8,500	146,700	221	664	1,180
Brighton ..	14,400	157,200	260	605	1,582
Southport ..	9,400	82,400	161	511	1,560
Hastings ..	7,800	64,500	127	508	1,765
Eastbourne	11,400	57,200	127	450	1,987

County comparisons are interesting also, for instance:

County Council	*Area (acres)*	*Population*	*Authorized Establishment*	*Population per Police Officer on Authorized Establishment*	*Net Cost per 1,000 Population* £
Norfolk ..	1,303,000	375,000	482	778	1,125
Yorks, North Riding ..	1,357,000	378,000	650	582	1,431

The number of policemen is obviously the major cost governing factor but even so other points will repay investigation. For example, we are aware that certain police authorities have achieved very substantial reductions of uniform costs. After exhaustive examination they are satisfied that alternative, cheaper cloths can be used and prove equally serviceable; appropriately enough the West Riding of Yorkshire has pioneered this inquiry. Again, it is desirable that the use of policemen on clerical work should be restricted to the minimum, having regard to the high cost of their employment as compared with civilian clerical labour.

All police authorities are anxious that the money they disburse shall be spent to the best advantage and waste eliminated; the return is capable of assisting them considerably to achieve these objects.

MINES AND QUARRIES ACT, 1954

This Act provides in considerable detail for the management and control of mines and quarries. The enforcement of the Act in this respect is a matter for the Minister of Mines acting through his inspectors and does not therefore concern local authorities. Those of them, however, who own quarries are concerned alike with other quarry owners and should give careful consideration to the provisions which aim at improving the general conditions under which quarries are administered and for promoting the safety of persons concerned thereby. For the purpose of the Act the expression " owner " means, in relation to a quarry, the person for the time being entitled to work it. Where the working of a quarry is wholly carried out by a contractor on behalf of the person entitled to work it, the contractor is, to the exclusion of others, to be taken for the purposes of the Act to be the owner of the quarry. The expression " quarry " means an excavation or system of excavations made for the purpose of, or in connexion with, the getting of minerals or products of minerals, being neither a mine nor merely a well or bore-hole or a well and bore-hole combined. There is to be deemed to form part of a quarry so much of the surface surrounding (including buildings) or adjacent to the quarry as is occupied together with the quarry.

Local authorities generally are, however, concerned with s. 151 which brings the following within the meaning of a " statutory nuisance " under Part III of the Public Health Act, 1936 :

(*a*) a shaft or outlet of an abandoned mine or of a mine which, notwithstanding that it has not been abandoned, has not been worked for a period of 12 months, being a shaft or outlet the surface entrance to which is not provided with a properly maintained device ;

(*b*) a shaft or outlet of a mine with respect to which the following conditions are satisfied: (i) that its surface entrance is not provided with a properly maintained device ; and (ii) that, by reason of its accessibility from a highway or a place of public resort, it constitutes a danger to members of the public ; and

(*c*) a quarry (whether in course of being worked or not) which : (i) is not provided with an efficient and properly maintained barrier

so designed and constructed as to prevent any person from accidentally falling into the quarry; and (ii) by reason of its accessibility from a highway or a place of public resort constitutes a danger to members of the public.

Under s. 91 of the Act of 1936 it is the duty of every local authority to cause their district to be inspected from time to time for the detection of matters requiring to be dealt with as statutory nuisances. The local authorities for this purpose are the councils of boroughs, urban and rural districts. A local authority, and in this connexion rural district councils are particularly concerned, has therefore important duties to perform for the general protection of the public. An abatement notice should be served where such a statutory nuisance is found to exist and the local authority may take proceedings under s. 94 if the person on whom an abatement notice has been served makes default in complying with any of the requirements of the notice, or if the nuisance, although abated since the service of the notice, is in the opinion of the local authority likely to recur on the same premises.

Any expenses incurred, by reason of the operation of Part III of the Public Health Act, by a person other than the owner of a mine or quarry for the purpose of abating, or preventing the recurrence of a nuisance or in reimbursing a local authority in respect of the abatement, or prevention of the recurrence, of such a nuisance, is, subject to any agreement to the contrary, recoverable from the owner.

DEFENCE (GENERAL) REGULATIONS

By the Defence (General) Regulations (No. 1) Order (1955) S.I. 295, regs. 55 and 55AA are amended to confer power to make orders governing disposal, acquisition and possession of any goods under hire purchase and credit sale agreements.

LANCASHIRE No. (2) COMBINED AREA PROBATION REPORT

From many reports of probation officers we find evidence of an increased use of probation, not only in the magistrates' courts but also in courts of assize and quarter sessions. In the present report, Mr. Wm. E. Wotherspoon, senior probation officer, writes:

"It will be observed there has been an increase in the number of probation and supervision orders made during the year. It does not necessarily follow there has been an increase in crime but rather that greater use has been made of the probation system. This is most encouraging as it demonstrates the faith H.M. judges, recorders and magistrates have in this branch of treatment which is at their disposal. Furthermore the increase in those orders made for two years is of great assistance to the probation officers. Especially is this wise for those young persons who are just about to leave school as the longer period of supervision is of special benefit in that it assists in the transfer of those persons to the industrial world: a change-over in life which is of extreme importance." Probation orders in respect of adults increased during 1954 by 25 *per cent.* Mr. Wotherspoon adds that these orders generally lead to satisfactory results, probably because adults appreciate the nature of probation and the consequences of failure better than juveniles usually do.

After-care is rightly looked upon as a work of co-operation with the institutions. Without adequate after-care, says Mr. Wotherspoon, the efforts of colleagues in the institutions may well be wasted.

The value of case committees in assisting probation officers with advice and sometimes with practical help, and in enabling magistrates to appreciate the probation system, has often been stated. This report makes a further point. To enable members of case committees to speak on particular matters concerning their area every effort is made to hold these meetings prior to a combined area probation meeting.

As is generally known, Home Office trainees are often attached to a magistrates' court to work under the probation officer during part of the period of training. This is a valuable method of giving the trainees some practical experience of the kind of work they hope to do. This report states: "Members of the staff selected as tutor officers accept their task willingly and regard the training of future probation officers as a great responsibility."

ROAD CASUALTIES

Provisional Total for January and Final Figures for December and the Year 1954

Road accidents in January this year caused 357 deaths, 3,766 serious injuries, and 11,385 slight injuries, a total of 15,508. These figures are provisional and details are not yet available.

Compared with the final figures for January, 1954, the total shows an increase of 964. The number of deaths was 26 less, but serious injuries increased by 143 and slight injuries by 847.

Final figures for last December give a total of 22,471, or 1,249 more than in December, 1953. This total includes 634 deaths, 5,667 serious injuries, and 16,170 slight injuries.

Casualties in all road accidents during the year 1954 are now known to have totalled 238,281—a few less than previously stated, but 11,511 more than in 1953. Deaths numbered 5,010, a decrease of 80; serious injuries 57,201, an increase of 679; and slight injuries, 176,070, an increase of 10,912.

The increase in casualties occurred entirely among adult road users. While the number of adult deaths increased by 55 to 4,348, the number of child deaths fell by 135 to 662. There was also a decrease in the number of children seriously hurt but an increase in the number of slight injuries. The total for all child casualties was 44,133, a decrease of 113.

COUNTY BOROUGH OF ROCHDALE— CHIEF CONSTABLE'S REPORT FOR 1954

Rochdale is one of the more fortunate places from the police point of view in that the actual strength of the force on December 31, 1954 (159) was within five of the authorized strength (164). The chief constable attributes the improvement partly to pay increases in January, 1954, and partly to the excellent housing situation. There are available 103 houses for 159 male members of the force. It is emphasized that it is a bad policy to try to gain strength by reducing the required standard. Many recruits were rejected because their educational papers were below the acceptable standard. The chief constable rightly points out that it is not the uniform which makes the policeman, but the knowledge, the character of heart and mind and his development with responsibility which only proper training can give.

The visit of Her Majesty the Queen on October 22 was a special event for Rochdale which stretched police resources to the limit. There were on duty 157 members of the regular police, 44 special constables, and 42 other officers on loan from Lancashire county police. Special mention is made of the bearing and smartness of the "specials" and of their willingness to turn out in all conditions.

The careful training of police drivers and their good road sense are evidenced by the fact that there was only one accident to a police vehicle during the year although 150,000 miles were covered.

We are glad to see that the chief constable supports the view that the man on the beat has not lost his importance, and he refers to the effect of his greater actual strength in enabling better cover to be given. He gives a warning that the crews of police cars, who because of their mobility arrive first at an incident, should not continue with duties which could be performed by the men on foot who arrive a little later. If the car crews do this they make themselves less available for further duties where their mobility is essential.

A paragraph is given to police dogs, and it is noted that since the dogs, with their handlers, started a "poultry" patrol in December, thefts from hen pens have been almost non-existent.

There is a plea, found in a number of other reports, for the public to be more careful of their own premises, and not to add unnecessarily to the work of the police by carelessly leaving shops and houses insecure.

In a paragraph on betting and lotteries the chief constable comments on recent High Court decisions and warns those interested that although amending legislation may be coming it must not be expected that the police will turn a blind eye to present infringements in anticipation of what the law may later be.

Special mention is made of a crime prevention campaign, inaugurated on September 1, 1954. Its object is by police visits to occupiers of lock-up premises, following on the delivery of explanatory pamphlets, to enlist the support of the public in helping the police to prevent crime. The visiting officers make suggestions to the occupiers, the adoption of which should lead to greater security, and experience has proved the value of these suggestions when they have been adopted.

There are other features in this report (including a very interesting analysis of road accident causes) which we should have liked to comment on, but space forbids. The report concludes with thanks to the press for their understanding support. To quote the chief constable "They are always eager for news, but their keenness has been accompanied by good taste and an appreciation of our problems."

YORKSHIRE NORTH RIDING PROBATION REPORT

In his report for 1954, Mr. Frank L. G. Sendall, principal probation officer for the North Riding of Yorkshire Probation Area, records a decrease in juvenile crime, the figure being the lowest during 14 years. Grouping the offences of larceny, receiving, office, etc., breaking, fraud and false pretences under the general heading of thieving, he finds that whether juvenile crime goes up or down the proportion of thieving remains almost constant at about 62 *per cent.* of the total number of juvenile offenders. There was a welcome and substantial drop in 1954 in the number of offences of damage to property, but, unfortunately, there was an increase in sexual offences. Very few juveniles who were receiving or had received technical or grammar school education committed offences. Generally, it appears that offences rise to a peak during adolescence and drop when working life starts.

Whether matrimonial cases are handled better by probation officers with experience of married life or whether single men and women can do so just as well, is a matter of opinion. Mr. Sendall comments: "In an ideal arrangement possibly none but married officers should deal with other people's matrimonial troubles; in the wide spaces of the Riding each officer has necessarily to deal with cases in the area he or she serves and though there are four married officers and five unmarried officers they all have the same amount of success, which in turn is parallel with such work over the whole country. In round figures five out of every 10 couples are brought together again."

Since there is occasional criticism, ill informed it is true, about the cost of the probation service it is not out of place to remind people occasionally of its cost as compared with other methods of treatment. Mr. Sendall writes: "The return for the cost of the Riding's probation service is that 95 *per cent.* of the probationers did not get into further trouble during 1954 and over the range of the past five years 90 out of every 100 probationers remained stable in behaviour. In other words and in the most materialistic view, the probationers who were of working ages were able to maintain themselves and, where married, their wives and families, instead of being a very considerably heavier cost to the country through being sent into detention. On the non-statistical side I believe that the sweeping majority of those supervised were, on completion of their supervision periods, left more able to cope successfully with the problems of living as members of the community."

APPROVED SCHOOLS CONTRIBUTIONS

By the Approved Schools (Contributions by Local Authorities) Regulations, 1955 (S.I. No. 253), the rate of contributions by local authorities (except where they are themselves managers or joint managers) is increased to 80*s.* 6*d.* per person per week (operative April 1).

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 24.

A DIFFICULT TASK

Application was made last month to the Newington divisional licensing committee under s. 7 of the Licensing Act, 1953, to determine the monopoly value attributable to the licence of a beerhouse in the division which had been in suspense for some years, the house having been closed from February, 1952.

It was stated on behalf of the owners, E. Lacon & Co., Ltd., that it was their intention to surrender the licence if an application which they were making later in the month to the neighbouring Wandsworth divisional licensing committee was successful. That application was to be for a grant of a publican's licence in respect of premises enjoying a justices' beer and wine on-licence, and the intention of the owners was of course, to reduce the monopoly value payable upon the grant of the publican's licence.

The application was the first of its kind to come before the Newington justices, and the Commissioners of Customs and Excise were informed prior to the hearing that in view of the difficult task imposed on the justices by the section, the commissioners would be expected to support any figure they might feel right to suggest to the committee by a full statement of the manner in which such figure had been arrived at.

Upon the hearing of the application it was stated on behalf of the brewers that subject to the approval of the justices a figure of £1,200 had provisionally been agreed between the commissioners and the brewers. A professional valuer was called on behalf of the brewers to indicate how he had arrived at the figure of £1,200. The valuer stated that the average trade of the house from 1937 to 1939 was 316 barrels of beer *per annum*. The property had been acquired by the local borough council under a notice to treat dated July, 1946. The trade for the year to March 31, 1946, was 362 barrels. The witness estimated the capital value in 1946, including the licence, to be approximately £11,000, and the value of the licence alone, as part of the trading beerhouse, at approximately £2,500.

The valuer, after pointing out that the owners had a reasonable chance of securing another site to which they could apply at a later date to remove the licence, stated that he was of the opinion that the value of the licence in suspense, divorced from its old site, was not less than half the value it had as part of the trading beerhouse. In this way the valuer reached a figure of £1,250, which he had agreed with the commissioners to reduce to £1,200.

A representative called for the commissioners stated that he had reached the same figure by an entirely different method. He had visualized premises similar to those which had been demolished erected in an area giving similar opportunities for trade to that in which the beerhouse in question had stood. He had estimated the trade at that house at being 260 barrels, which at £35 per barrel gave a figure of £9,100 for the licensed premises. Witness was of the opinion that the cost of suitable premises and a site would amount to £6,500, giving a full monopoly value at the date when the premises were rebuilt of £2,600. From this figure witness made a deduction to reflect the risks involved to arrive at a present value of £1,175. In agreement with the brewers' valuer he had increased the figure to £1,200.

The licensing justices, after hearing this evidence, deferred giving their decision until March 7 last, when the chairman after pointing out that no guidance was to be found in the Act as to the manner in which a licence which had been in suspense for some years should be valued, commented that it was not surprising that in these circumstances the valuers appointed by the commissioners and the brewers respectively, had used very different methods in reaching their conclusions. The chairman said that the justices felt that the proper method to adopt was to assume that the demolished house had been reconstructed and was trading at the present day on its old site, with the present day population surrounding it. Once a figure was obtained for the value of the licence in such circumstances it was possible to decide what diminution in that figure was appropriate, having regard to the fact that the licence was in suspense and that there was no certainty of it being possible to remove it elsewhere.

The chairman, after mentioning that the committee had taken into account all relevant information including the barrelage during the last three years during which the house was open, the slow but steady diminution in the quantity of beer consumed in this country during the last few years and the increasing trend to consume such beer at home, stated that the committee felt that the figure put before them was too high and that a fair figure to set upon the value of the licence was £1,000.

At a meeting of the Wandsworth licensing committee a few days later successful application was made for the publican's licence referred to above and the licence of the beerhouse, the subject of the application to the Newington justices, was surrendered, the brewers being credited with £1,000.

COMMENT

In the writer's experience it is unusual for licensing justices not to accept the figure recommended to them by the commissioners when monopoly value has to be fixed, and there can be no doubt that in general it is proper for the licensing justices to adopt this attitude for the commissioners have great experience in this work and can safely be relied upon to guard the public interest.

It is, however, normally in connexion with the grant of a new publican's licence or, since the Finance Act, 1947, in connexion with the surrender of a *current* beer or beer and wine on-licence, that questions of monopoly value arise. Where, as here, the assessment has to be made in respect of a licence in suspense, it is submitted that lay justices are just as well able to put a value upon the licence as a professional valuer assuming, of course, that there is made available to them, as there must be, details of the trade at the house and that they know the value to be put upon the barrelage.

It would seem that in the absence of any indication in the Act as to how a licence in suspense is to be valued, the method adopted by the licensing justices in the case reported above is the commonsense one and there would seem to be no justification for taking as the material date, the date upon which notice to treat was served, as was done by the brewers' valuer in this case.

The problem, however, bristles with difficulties, for justices may well be asked to value in 1956 a licence where the house has been closed owing to war damage since, say, 1943. The trade figures for the last three years the house was open would manifestly be affected adversely in London by the blackout and the bombing, and in such a case it might be proper to take the figures for 1937, 1938 and 1939.

Apart however from the trade figures there are many other matters which must be taken into account, for example, neighbouring public houses may have had considerable money spent on them in the intervening years to render them more attractive. It might well be said that the house whose licence was in suspense would have had money spent on it also to enable it to compete with its improved neighbours

but this must be a matter of conjecture. Again, it is possible that the beers of the brewers owning the house in question may have gained or waned in popularity since the house was closed. In addition, it is an unquestioned fact, at any rate in the London area, that the tendency has been in the last year or two for drinking in the public houses to be confined to week-ends and for customers who, in the old days, would have gone to the pub once or twice in the week for an hour in the evening, to purchase their supplies to consume at home whilst watching television. There is also a steady and persistent, although slow, diminution in the country as a whole in the consumption of beer, and in London this has probably been more noticeable than elsewhere on account of the drive to diminish the number of people living in the metropolitan boroughs and to encourage such people to live further afield.

In the case reported above an off-licence had been removed, since the beerhouse was demolished, to a site in the same road and only a few yards away. It may be said that the off-licensed trade which a beerhouse expects to do is negligible and that no account should be taken of this fact in fixing the monopoly value, and this may well be the case.

The writer has tried to indicate some of the problems which face licensing justices when called upon to value a licence in suspense, and it will be borne in mind that it seems plain from the wording of s. 7 (6) of the Act of 1953 that in such a case the justices need not necessarily fix the monopoly value at the difference between the licensed and unlicensed value of the premises.

For the encouragement of justices who may be depressed after reading these comments it should be added that provided the justices exercise the discretion given to them judicially, and determine upon proper evidence, their decision cannot be challenged successfully. R.L.H.

REVIEWS

Lumley's Public Health. Twelfth Edition. Vol. V. London: Butterworth & Co. (Publishers) Ltd. Shaw & Sons, Ltd. Price £5 5s. net.

The appearance of vol. V. of *Lumley* is an event. It completes the twelfth edition (apart from an index volume still to come) and it brings the treatment of the statute law relating to local government, including not merely public health but many other matters, up to date as at the end of 1953. Although 1954 was not free of new legislation within the scope of *Lumley*, notably the Town and Country Planning Act, 1954, and some provisions of the Housing Repairs and Rents Act, 1954, it will be of immense assistance to local government officials and others concerned to have this volume—which could not, because of the mass of statutes to be treated, be completed (all shipshape and *Lumley* fashion) by the editors until October, 1954, or by the publishers and printers until the end of the year. It will be remembered that vols. VI and VII of this new edition came out in advance of vol. V, with the result that the Statutory Rules and Orders and Statutory Instruments in those volumes are not now wholly up to date. This could not be avoided, and the notes in vol. V call attention (of course) to any newer Instruments bearing on the statutes treated. It should be added that the portions of the Housing Repairs and Rents Act, 1954, which affect the Housing Acts treated in this and earlier volumes have been put in an appendix, by way of exception to the general rule that, otherwise, the list of contents has been closed at the end of 1953.

The statutes treated begin with the Requisitioned Land and War Works Act, 1948, and (apart from the Housing Repairs and Rents Act, 1954, as just mentioned) finish with the Electoral Registers Act, 1953. Within this period of some five years there has been a remarkable crop of statutes which are important in the local government world, either in themselves or because of their effect on the legislation to be found in previous volumes. Amongst these are several consolidation Acts, and it has been necessary in some places to repeat or remodel notes upon the previous legislation to be found in earlier volumes. The Representation of the People Act, 1949, is fully treated, and some notes which in earlier editions had been attached to other statutes on the subject have now been brought under the rubric of that Act.

Where such an extensive field had to be covered, nobody can really say which of the statutes are most important; perhaps the answer is that that statute is most important which the practitioner is called on to apply at the moment when he takes *Lumley* from his shelves. Certainly attention should be drawn to the Local Government Act, 1948; the River Boards Act, 1948; the Rivers (Prevention of Pollution) Act, 1951; and the Local Government Superannuation Act, 1953, all of which have modified earlier legislation in substance or in form. The Act of 1951 replaces legislation dating from 1876, and may (one hopes) prove revolutionary. Among entirely new statutes there is the National Parks and Access to the Countryside Act, 1949, which has meant a great deal of work for local authorities and contains much-discussed provisions, which call for the full annotation which is given them. The Shops Act, 1950, is a consolidation Act which inevitably (we suppose) reproduces obscurities and inconsistencies of the earlier Shops Acts, and is another statute where annotation is necessary for its understanding. The Prevention of Damage by Pests Act, 1949, is partly re-enactment and partly new law. It is short, but if properly worked holds promise of useful work by local authorities. The "improvement" powers of the Housing Act, 1949, are much in the public's eye at present, and *Lumley* relates them to the earlier and later law. The Public Utilities Street Works Act, 1950, and the New Streets Act, 1951, are involved and difficult; here again competent annotation is important, as also for the Coast Protection Act, 1949. The notes hereon are valuable in wider contexts, by reason of light thrown upon joint inquiry by Ministers, and other matters of procedure not usually dealt with. We do not, indeed, remember seeing another textbook upon that Act, which is strange when one considers how widespread are the interests it affects, financially and otherwise, and how complex the relationships it established between local authorities, nationalized industries, public utilities, and government departments.

As before, the senior editor is Mr. Erskine Simes, Q.C., who (although he has withdrawn from practice) remains closely associated as a member of the Lands Tribunal with some aspects of local government and related subjects; with him is Mr. C. E. Scholefield. The preface mentions other members of the bar, who have given assistance with particular subjects.

We take it for granted that no local authority will attempt to do without *Lumley* in its office; many of our readers therefore do not need persuading that they must have this fifth volume. There is in the volume also a good deal which concerns magistrates' courts, and we should accordingly advise including it among the works supplied to clerks to justices. The solicitor in private practice may be tempted to think it too expensive, and to suppose it is too specialized, for his purpose, but in truth he will usually be acting wisely if he also fortifies himself, for handling the large number of items of business of his clients which brings them into relation with local authorites, by obtaining *Lumley*. It is indeed a species of encyclopaedia, in effect though not in name, which contains so much information that it will generally save the labour of hunting through several other books.

It is also, we are glad to say, a work commonly to be found in public libraries. Dangerous as it may be for the ordinary user of such libraries to do his own legal research, into most matters, the full annotation by the learned editors of *Lumley* will ensure that the unlearned reader will be on safer ground than in many branches of the law, if he tries to find out what the provisions are that may affect him. And, without advocating the dangerous course, for private persons, of acting as their own lawyers, we can say that for councillors and would-be councillors, and generally such persons as wish to inform their minds about local government, public health, rating, the local government franchise, and many other topics, the work ought to be made available in every well-conducted public library.

The Essentials of Domestic Law in Summary Courts. By E. R. Guest, M.A., B.C.L., a Metropolitan Stipendiary Magistrate. London: The Technical Press Ltd., 1 Justice Walk, Lawrence Street, S.W.3. Price 2s. net.

This booklet, of 16 pages, "intended for the private pocket and spare-time reading," is just what a lay magistrate needs as an introduction to a difficult branch of his work. Mr. Guest disclaims any intention of writing a substitute for textbooks. What he set out to do, and has done admirably, was to state general principles upon which magistrates have to decide matrimonial cases, so that, in listening to the evidence they will know what is relevant and what to listen for in what is often a confused story told by an unrepresented party. The clerk will advise when his help is necessary but study of this booklet will help the justice to follow the evidence and to realize where advice is needed.

The booklet is limited to a discussion of the four principle grounds upon which orders are granted namely, desertion, neglect to maintain, persistent cruelty and adultery. With an adequate knowledge of these, a magistrate will know how to approach the rarer types of case.

This booklet seems to us so practically useful and so easy to read that we hope it may prove to be the first of a series. Mr. Guest hints at this in his preface.

The British Year Book of International Law, 1953. By Geoffrey Cumberlege. Oxford University Press. Price 75s. net.

This work is issued under the auspices of the Royal Institute of International Affairs and has now reached its thirtieth year. It has become an established work of reference and one of the main works of scholarship, upon international law and related topics. As usual, the new issue comprises a collection of essays by a variety of learned persons. Sir Gerald Fitzmaurice, legal adviser to the Foreign Office, contributes a preface, and summarizes the general principles followed by the International Court of Justice from 1951 to 1954. This is a mine of information, about cases of which some have been noticed in the newspapers whilst others are known only to the expert. The next paper deals with the secretariat of the United Nations, and there is a paper upon the immunities of the property of diplomatic envoys, a topic increasingly important in these days, when sovereign states multiply and exalt their representatives to be ambassadors, and diplomats and semi-diplomats of mixed calibre and character proliferate about the world.

Professor Lauterpacht deals with the limits of the operation of the law of war, and there are two papers dealing with problems arising from the constitution of the British Commonwealth. There is a paper upon the enforcement of taxation under international law, and no less than four upon various aspects of the law affecting treaties. This is a rich feast for those who can digest it. In the nature of things they cannot be many, even at the legal table ; for all that, the year book is so important that it ought to be found in every public library, and is worthy of study not only by lawyers but by all serious minded students of the world as it is today.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

In your issue of February 26, 1955, you published an article from me on the subject of " Improvement Grants." At pp. 131, 132, I discussed the question of fixing the maximum rent where an improvement grant was made, and (at p. 132) I dealt with the question whether the landlord was entitled to increase the rent by eight *per cent.* on his own expenditure. And then I summarized the position by saying " Therefore a landlord who merely improves an existing dwelling controlled by the Rent Acts, without altering the identity of that dwelling, is entitled to increase the (existing) rent by an amount equal to eight *per cent.* on the expenditure which he has himself incurred." That statement of mine should be corrected forthwith. Section 37 (1) of the Housing Repairs and Rents Act, 1954, provides in terms that the duty of the local authority to fix a maximum rent for dwellings where an improvement grant has been made extends to *every* dwelling so provided or improved which is, or on a letting would become, a dwelling-house to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applies. There are certain exceptions to that proposition and the complete position is therefore as follows:

The local authority must fix the maximum rent in every case where an improvement grant is made, except:

(1) Where the rateable value of the dwelling-house is outside the scope of the Act of 1920.

(2) Where before the approval of the application for an improvement grant a rent tribunal (under the Landlord and Tenant (Rent Control) Act, 1949) has already determined what is a reasonable rent for a dwelling (s. 37 (4) of the Housing Repairs and Rents Act, 1954).

(3) Where a dwelling-house has been erected after August 30, 1954, and an improvement grant is made solely for improvement and not conversion (*see* s. 35 of the Housing Repairs and Rents Act, 1954).

Yours sincerely,
MESTON.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

MARRIAGE ACT, 1949, s. 3
CONSENT TO MARRY
VENUE IN MAGISTRATES' COURTS

There is a note in *Stone* 1954, p. 1532, which states that " The application of the *Sandbach Case* to an application for consent to marry requires that the court empowered to consent is that of the district in which the person refusing consent resides."

This being so, it would appear that not a little hardship may be inflicted upon an applicant living in Northumberland in a case where the respondent resides in Cornwall. Another case can be cited, where an applicant's parents live in different districts from each other and from the applicant, and relying on the note in *Stone, supra,* if the applicant resides in Andover, one respondent in Appleby and the other in Accrington, considerable expense is to be incurred, and supposing the court in Appleby gives consent and the court in Accrington refuses? It would appear to be reasonable that jurisdiction should be given to the court in the district where the applicant resides as well as to the justices where the respondents reside, and the applicant choosing one court, that court should have exclusive jurisdiction in order to save confusion.

If a respondent should not find it possible or is unable to travel on the grounds of expense, the court may be permitted to receive from the respondent either a letter stating the objection or perhaps an affidavit or statutory declaration by the respondent taken before a justice where he resides.

It may well be that had the *Sandbach Case*, 114 J.P. 514, been decided before the Marriage Act, 1949, s. 3 would have been differently worded.

The difficulties mentioned have recently arisen in this borough in two instances. In number one the applicant, a young woman of 19 (mother deceased) asked the court of the Chesterfield justices to consent to her marriage, and her father residing in Worcestershire refused. I advised the court here that it had no jurisdiction. In consequence, her application will be heard in Worcestershire but she must take two aunts with her to that court and her fiancé is accompanying them. This entails considerable expense for a young couple contemplating early marriage. In case number two, the parents of the applicant are living apart, the mother who refused consent resides in this division, the father (who consented) in an adjoining division where his daughter also resides. The Chesterfield borough justices heard the application and gave consent. Fortunately in this case no great expense had to be incurred.

I present the difficulties of an applicant under the 1949 Act so that in case of any amendment to that Act being thought desirable, this point may receive consideration.

Yours faithfully,
CHAS. PROCTOR,
Clerk to the Justices.

Borough Justices' Clerk's Office,
40 Gluman Gate,
Chesterfield.

ADDITIONS TO COMMISSIONS

ESSEX COUNTY

Miss Iris Hilda Blyth, 16, Abbotsford Gardens, Woodford Green.
Alfred Ernest Brown, 24, The Laws, Harlow.
Sidney Nelson Chaplin, 17, Avon Road, Walthamstow, E.17.
Mrs. Katherine Clare, Parndon Hall, Harlow.
Mrs. Joan Isobel Edmondson, 59, Spireleaze Hill, Loughton.
Stanley Victor Ellmore, 5, Recreation Avenue, Romford.
Robert Oswald Foster, The Mount Albion Hill, Loughton.
Donald Logan Forbes, O.B.E., Lonach, Woodland Close, Woodford Green.
Victor Edwin Arthur Glasscoe, 64, Hollywood Way, Woodford Green.
Kenneth Edward Boulton Glenny, Cardington, Hall Lane, Upminster.
Mrs. Clare Anderion Grogono, 61, Monkhams Lane, Woodford Green.
Albert Horswell Hart, 32, Hurst Avenue, Chingford, E.4.
Aubrey Jack Hatley, 45, Waverley Road, South Woodford, E.18.
William Henry Herridge, 22, Edgerton Gardens, Seven Kings, Ilford.
Mrs. Betty Kathleen Lowton, 4, The Drive, Chingford, E.4.
John Farbon Moultrie, 16, Junction Road, Romford.
Mrs. Joan Elizabeth Robertson, The Old Vicarage, Burnham-on-Crouch.
Stanley George Shepherd, 5, Maple Road, Leytonstone, E.11.
Mrs. Irene Titley, 3, Woodberry Road, Chingford, E.4.
Mrs. Joanna Sylvia Tritton, Crown House, Sheering, Bishops Stortford.
Frederick John West, O.B.E., Oak Grove, Epping.
Mrs. Evelyn Violet Whiter, 79, Harold Road, Chingford, E.4.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

OBSCENE PUBLICATIONS BILL

Mr. Roy Jenkins (Stechford) has been given leave, under the Ten Minute Rule, to introduce in the Commons a Bill to amend and consolidate the law relating to obscene publications.

He said that the Bill was drafted by a committee, set up under the auspices of the Society of Authors, of which Sir Alan Herbert and, later, Sir Gerald Barry, acted as chairman.

The need for the Bill arose largely out of five cases during 1954, in which publishers of the highest repute were accused of the common law offence of obscene libel. The five cases had varying results; there were two acquittals, two convictions, and one case in which the jury twice disagreed. On the third trial the case lapsed because, as was the practice, the Director of Public Prosecutions then offered no evidence.

As a result of those five cases, concern arose on at least three grounds. First, it was felt that the law was in an extremely uncertain state, and it was difficult to reconcile the way in which it was being applied in different cases, there being a most marked difference in each summing-up. Secondly, it was felt that on the basis of the law stemming from the famous Hicklin judgment of 1868, an obscurantist and almost ridiculous literary judgment could, in certain circumstances, be imposed. Thirdly, a real danger might arise of printers and librarians themselves beginning to imply a censorship more rigid than the law could sustain in order to safeguard themselves.

There were a number of anomalies and difficulties about the present state of the law. It was clear that the purpose and intention of the author and the publisher were not relevant matters in deciding what the verdict should be. No defence was provided for or permissible on the grounds of the literary, artistic or scientific merit of the publication. No expert evidence could be called. There was no certainty whether it was isolated passages or the dominant effect of the work in question which had to be judged. Curious though it might seem, there were no maximum penalties laid down for an offence against that section of the law.

Mr. Jenkins said that the central feature of his Bill was summed up as follows: "The question of intention is declared to be relevant, and the court is required to consider among other factors: (*a*) the dominant effect of the publication, (*b*) evidence of its corrupting influence, if any, (*c*) literary or other merit of the publication, (*d*) the type of persons among whom it is likely to circulate."

There was no necessary conflict between the Bill and the Children and Young Persons (Harmful Publications) Bill now before Parliament. They were in no way opposed to dealing by legislation with the question of horror comics, but they wanted it to be based on intent and not upon the objective basis which was in the Bill at present.

Leave to introduce the Bill was granted without opposition, and it was formally introduced by Mr. Jenkins, supported by Mr. John Foster, Mr. Fort, Mr. Angus Maude, Mrs. Eirene White, Mr. Nigel Nicolson, Mr. Kenneth Robinson and Mr. Simon.

INDICTABLE OFFENCES DECREASE

The Home Secretary states in a written Parliamentary answer that provisional figures for the first nine months of 1954 show that the number of indictable offences known to the police in England and Wales during that period was 318,754 compared with 352,384 for the corresponding period of 1953, a decrease of 33,630 or 9·5 *per cent.*

He circulated the following table showing the division of the offences into groups:

Offence group	Offences known to the police		
	1953 January 1—September 30	1954 January 1—September 30	Variation per cent.
			per cent.
Violence against the person	5,262	5,595	+6
Sexual offences	12,482	12,269	—2
Breaking and entering ..	65,978	55,420	—16
Larceny	229,189	207,809	—9
Receiving	5,948	4,718	—21
Frauds and false pretences	20,779	20,349	—2
Forgery	3,487	3,466	—1
Malicious injury to property	4,043	3,934	—3
Robbery	739	613	—17
Others	4,477	4,581	+2

REMAND HOME COSTS

The Home Secretary told Mr. D. Jones (Hartlepools) that in 1954-55, when the number of admissions and the average length of stay had continued to decline, the average weekly cost per head of maintaining children in remand homes was estimated to be £10 19*s.*

ROAD TRAFFIC OFFENCES

When the Road Traffic Bill was considered on Report in the House of Lords, the Government accepted an amendment moved by Earl Howe to provide that on a second conviction for exceeding the speed limit there should be disqualification only if not more than three years had elapsed since the previous conviction. Accepting the amendment, Lord Manscroft said that fines had been raised in the Bill to draw attention to the gravity which the Government attached to those offences, and to the leniency with which some fines had been imposed.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF COMMONS

Tuesday, March 15, 1955

OBSCENE PUBLICATIONS BILL, read 1a.

Friday, March 18, 1955

LOCAL GOVERNMENT ELECTIONS BILL, read 1a.

MAGISTERIAL MAXIMS. No. XXII

At no great Distance of Time from that at which these Words are Penned, a certain Young Legal Gentleman, attached to a Great Department of the State, was dispatched to a small County Magistrates' Court, to conduct, on Behalf of the Crown, the Prosecution of an Offender for what many Broad Minded Persons would deem but a Minor, and Highly Technical, breach of the Law, albeit an Offence triable Summarily or on Indictment.

The Clerk of that Court had grown Old in the service of Magistrates, and, with far more Grey Hairs in his head than the young Prosecutor had Years of his Age, what he did not Know about Magisterial and Criminal Law was Not Worth Knowing.

It happened, when the Case came on that the Prosecutor requested Trial on Indictment, and, the Justices consenting, all the Forms and Paraphernalia so unfortunately Necessary to the Taking of Depositions under the Existing System were duly Laid Out by the Clerk and his Staff.

It was Clear from the Onset, that the Advocate for the Crown, coming from the Great Metropolis, had but a Poor Opinion of Country Courts, for he adopted a Distinctly Lofty and Disdainful attitude, indicative of an opinion that he Knew All, and that All Others present Knew Nothing.

The Clerk, in his Wisdom, gave him his Head, and kept silent, when with another less Arrogant he would have put in a word or two of Advice and Counsel to ensure that the Ingredients Essential to the Charge were on the Depositions.

When the last Confused Witness for the Crown had thankfully stepped from the Witness Box, and the Crown's Representative had formally asked for a Committal for Trial, the Chairman, prompted, quite properly, by his Clerk, Gently, but quite Firmly pointed out that a very Formal, but Entirely Essential fact had not been Proved and that without its Proof there Could be no Committal for Trial, but, on the Contrary, would be a Discharge of the Accused.

Very shamefacedly, and in some Confusion, the Prosecutor had No Option but to beg leave to recall the necessary Witness, such confusion being heightened by the remark, sotto voce, of the Clerk, "Urbs in rure non Sapiens est," which doggerel and ungrammatical Latin as it was, he had Wit Enough to understand as "Wisdom is Not the Sole Prerogative of the City Dweller."

When the Proceedings of the day were ended, for this was the Last Case on the List, the Clerk, a kindly soul at heart, patting the young man on the shoulder as he bade him Good Day urged him to ever remember that Adage of old Athens, rendered into many differing forms of words in many Modern Languages, but into English in none better than "NOT ALL WHO DWELL WITHOUT THE CAPITAL HAVE STRAW IN THEIR HAIR."

AESOP II.

BOOKS AND PAPERS RECEIVED

Low Intelligence and Delinquency. By Mary Woodward. London: I.S.T.D., 8 Bourdon Street, Davies Street, W.1. Price 1*s.* 6*d.*

The Police College Magazine. Volume 3. Number 4. Spring, 1955. Published by The Police College, Ryton-on-Dunsmore, Warwickshire.

County Council of Middlesex, Report on the work of the Local Taxation Licences Department from 1952.

Report of the Food Standards Committee (Ministry of Food) on Arsenic. Revised Recommendations for limits for arsenic in foods. H.M. Stationery Office. Price 4*d.* net.

NOTICES

The next court of quarter sessions for the county of Derbyshire will be held on Wednesday, April 6, 1955.

The next court of quarter sessions for the county of the Isle of Ely will be held on Wednesday, April 6, 1955, at Ely.

The next court of quarter sessions for the county of Cardigan will be held on Thursday, April 14, 1955 at the Town Hall, Lampeter.

The next court of quarter sessions for the city of Coventry will be held on Wednesday, April 13, 1955 at the County Hall, Coventry, at 11 *a.m.*

ANTI-SMEAR CAMPAIGN

Judicial processes in the United States are sometimes difficult for the mere Britisher to understand. The senatorial investigations under the chairmanship of Mr. McCarthy, strangely conducted as they seemed to English eyes, have not gained in prestige from the recent recantations of a number of witnesses who now allege that they were bribed, browbeaten or cajoled into giving evidence which has ruined many careers; the partial suspension, in political investigations, of the Fifth Amendment to the Constitution, which confers upon a witness the right to refuse to answer incriminating questions, has caused considerable heart-searching among American jurists. It is admitted that much information about the activities of " politically unreliable " persons is obtained from paid informers and *agents provocateurs*, who remain anonymous and with whom the accused cannot claim to be confronted. And now the long drawn-out opposition by the Judiciary Committee of the Senate to the appointment of a new Judge of the Supreme Court is stated to have been based solely upon considerations of party-politics—the distinguished Judge in question being known as an opponent of racial segregation in the schools of the Southern States, and a humanist with international sympathies. It is difficult to reconcile these anomalies with the lofty ideals proclaimed in a Constitution on which was based the Declaration of the Rights of Man, free and equal, without distinction of race, colour or political creed.

Notwithstanding these contradictions, and the contrasting state of civil liberty in our own slow, old-fashioned country, there are, from time to time, American voices to be heard urging us to share the blessings of freedom that they enjoy. These invitations seem to carry a slightly distorted echo of the words of Clough:

> " And not by eastern windows only,
> When daylight comes, comes in the light;
> In front the sun climbs slow—how slowly !
> But westward, look ! the land is bright."

The newest ray of daylight from the west illumines quite a different scene. Reversing recent trends, a number of well-meaning Americans have embarked upon the rehabilitation of an English character whose name has long been a byword for villainy of the deepest dye. The whitewashing process comes a little late in the day, as he was born just over five centuries ago and died in 1485. Moreover he was an absolute monarch—a status which one would not expect to attract sympathy from citizens of the great Republic that finally shook itself free from royalist tyranny 300 years after his death.

A group of 75 persons have recently come together in New York and formed a militant organization with the somewhat incongruous title " Friends of Richard III, Inc." Prominent in the Order of Battle are the actresses Tallulah Bankhead and Helen Hayes. The first shot in the campaign has been fired by Miss Bankhead in a manifesto reading as follows:

> " Libelled by history, fouled by legend, Richard III must be whitewashed, and his bones find their deserved crypt in the Abbey. *Let there be no shilly-shallying* ! "

By what title our American friends are taking it upon themselves to allot burial-space at Westminster is not clear, but this battle-cry brooks no delay. The call to arms has been followed by a declaration that Richard has been made a victim of the " Tudor slant," which seems to be our old friend the " smear-campaign " under another guise. He was " one of the first victims of the Big Lie "; his successors (it is alleged) destroyed many of the documents that would present him to posterity in a favourable light. (Perhaps, though this has not yet been openly suggested, he was secretly a member of the Republican Party.) Most English historians—and even the great Shakespeare himself—have been deceived, or have deceived themselves, as a result of the Democrat Victory of the Tudors and the final establishment of their Dynasty under that old scamp Henry VIII and that clever schemer Elizabeth I.

Here is something for the historical controversialists to get their teeth into at last. It will be much more fun than proving that Bacon was Shakespeare, or that Perkin Warbeck was rightful heir to the throne of England. Supporters on this side of the Atlantic are perhaps unlikely to be so thoroughgoing as to incorporate a company with an objects-clause designed for the express purpose of rehabilitating the memory of a King who has eight or nine murders to his credit—a record even for the turbulent days of the Wars of the Roses. They will, however, look gratefully towards the gleam of brightness in the west, and perhaps adopt, with a slight modification, the opening lines of Shakespeare's play on this very theme:

> " Now is the winter of our discontent
> Made glorious summer by this sun of York."

" New York," of course, is what the poet really meant to write. Reinforcements to the cause will not be lacking in England, where controversy over Richard's character has raised its head from time to time. The earliest attempt to vindicate him was by Horace Walpole, a famous *littérateur* and son of a great Prime Minister, in 1768. In a volume entitled *Historic Doubts* Walpole questioned the accuracy of the derogatory appraisal of Richard's character by Sir Thomas More and other historians allegedly notorious for their Tudor bias. (It is a curious coincidence that 1768 was also the year of the Colonial Taxation Acts which kindled the spark of rebellion in the New World.) Walpole's criticism was followed by James Gairdner in 1898 and by Sir Clements Markham in 1906. In our own day the late Elizabeth MacKintosh (better known as Gordon Daviot, the authoress of

Richard of Bordeaux) has taken up the cudgels in the same cause in her novel *The Daughter of Time*.

Space here will not permit us to examine the evidence in detail, but we may safely prophesy that Miss Bankhead and her colleagues will have an uphill task. Richard's detractors have got a long start; the sainted Thomas More and the revered William Shakespeare have given weighty evidence for the prosecution. Not only do they accuse him of responsibility for the deaths of Henry VI and his son Edward, Prince of Wales; George, Duke of Clarence (" drowned in a butt of Malmsey "); Buckingham, Rivers, Grey and Hastings; he is also the prototype of the Wicked Uncle, by whose orders those poor dear children, Edward V and his brother Richard, were smothered in the Tower. It may or may not be significant that Sir James Tyrrell, the reputed murderer, confessed to the crime only some 19 years later, just prior to his execution on another charge, and that he had been employed throughout that long period, in many positions of trust, by the avaricious and unattractive Henry VII, who was by no means tender towards those who had served his predecessor. Another mystery is the fact that Elizabeth Woodville, the surviving Queen of Edward IV and mother of the two murdered princes, accepted a pension, after the event, from Richard and continued to live under his protection at Court. If Shakespeare is to be believed she even considered him, reluctantly, as a possible son-in-law. There are certainly parts of this tangled skein that remain to be unravelled; whether New York is the most convenient centre of operations we may take leave to doubt. The tradition of five centuries, like the King himself on Bosworth's bloody field, is likely to die hard.

A.L.P.

PERSONALIA

APPOINTMENTS

Mr. John Hilton has been appointed town clerk of the borough of Rowley Regis, Staffs. Mr. Hilton, who was admitted in October, 1936, is at present clerk of the Pontypridd, Glam., urban district council, and was formerly town clerk of Dunstable, Beds. He will succeed Mr. Reginald Hegan, who as announced at 118 J.P.N. 737, will retire on March 31, 1955. Mr. Hegan was formerly deputy town clerk of Coventry.

Mr. Thomas Borthwick Alexander Moonlight, LL.B., senior assistant solicitor to Dagenham, Essex, borough council has been appointed deputy town clerk of Ashton-under-Lyne, Lancs. Mr. Eliot Andrews, the present deputy town clerk, has been appointed clerk to the Bridport, Dorset, rural district council. Mr. Andrews was admitted in July, 1948.

Mr. K. P. Poole, M.A., has been appointed an assistant secretary to the Association of Municipal Corporations. He is at present junior assistant solicitor in Oxford county borough council.

Mr. James Alan Elder has been appointed deputy secretary to the Rural District Councils Association, and took up his appointment on March 1. He was previously assistant solicitor with Hayes and Harlington, Middx., urban district council from June, 1952, and before that junior assistant solicitor with Hove, Sussex, borough council.

Mr. E. O. Wheale, barrister-at-law, the town clerk of St. Ives, Cornwall, has been appointed town clerk of Penzance borough, in the same county. Mr. Wheale was formerly deputy town clerk of Brierley Hill urban district council, Staffs., from 1939 to 1948 and has held posts as committee clerk with the borough of Oldbury, Worcs., and Aireborough, Yorks., urban district council.

Mr. Hubert Maurice Bray is succeeding Mr. H. G. Crudge as deputy clerk to the Bristol magistrates. Mr. Crudge has been appointed clerk to the Bristol magistrates on the retirement of Mr. A. J. A. Orme.

Mr. P. D. Green, assistant solicitor to Wood Green, Middx., borough council, has been appointed to succeed Mr. I. A. Clegg as assistant solicitor to the county borough of Barnsley, Yorks. Mr. Green, who was articled to the town clerk of Leigh, Lancs., was formerly assistant solicitor with Ruislip-Northwood, Middx., urban district council.

Mr. E. C. Dixon, LL.B., has been appointed assistant solicitor in the town clerk's department of Dewsbury, Yorks., county borough council. Mr. Dixon is at present a legal assistant with the Bebington, Cheshire, corporation.

Mr. R. G. Silman, assistant solicitor in the town clerk's department of Ruislip-Northwood urban district council, has been appointed assistant solicitor with the borough of Watford, Herts. The vacancy was caused by the resignation of Mr. R. D. W. Maxwell, whose recent appointment as deputy town clerk of Aylesbury borough council was reported at 119 J.P.N. 136.

Mr. J. K. N. Dawson, M.A. (Cantab.), LL.B. (Cantab.), has been appointed junior assistant solicitor with Bedfordshire county council, provisionally commencing May 1, 1955. He is transferring from Somerset county council where he was an assistant solicitor. Mr. Dawson was articled with Cambridge city council from 1950 until 1953 and was assistant solicitor with the same council from 1953 until 1954. Mr. Dawson's appointment is to fill a vacancy caused by the death of Mr. J. E. Lascelles.

Mr. W. G. Palmer, clerk of Wellingborough, Northants., urban district council, has been appointed superintendent registrar for births, marriages and deaths for Wellingborough district.

Mr. W. J Hayward, registrar of the Gloucestershire registration district, has been appointed registrar for the Clevedon and Portishead sub-districts with effect from April 1, in succession to Mr. Thomas Jay who is retiring.

Mr. Eric Gregory has been appointed second assistant to the clerk to the justices at Norwich. He was formerly third assistant to the justices' clerk at Wolverhampton.

Mr. Mark Flood, previously a temporary probation officer in Oxfordshire, took up appointment as a whole-time probation officer with the Berkshire probation service on January 1, 1955. He succeeds Mr. R. W. Speirs of Newbury, whose appointment as an inspector in the probation division of the Home Office was announced at 118 J.P.N. 770. Mr. Flood previously served as a whole-time probation officer in Hertfordshire from 1947 to 1951.

Mr. Robert Martin Lee has been appointed a whole-time probation officer for Warwicks. combined probation area with effect from April 18, next. He will serve at the Nuneaton probation office and his appointment became necessary in consequence of the resignation of Mr. T. E. Mallaban.

Miss R. K. Sharpe is leaving the service of Middlesex county probation committee on March 31, 1955, to take up an appointment as probation officer in Wiltshire. During the 13 years of her service in Middlesex, Miss Sharpe has served in the Edmonton division, and of latter years has been mainly at the Enfield court in that division.

Mr. A. L. Marriott has been appointed to the post of legal clerk, grade A.P.T. III, in the town clerk's department of the borough of Sutton and Cheam, Surrey. Mr. Marriott is at present employed as a law clerk with the North East Metropolitan Regional Hospital Board, and previous to that he was a legal assistant for the metropolitan borough of Bethnal Green, E.2.

Miss Daphne J. Tibbits, aged 32 years, at present serving as a probation officer for the Watford, Herts., petty sessional division, has been appointed a whole-time probation officer for the Dorset combined probation area. Miss Tibbits will fill a vacancy caused by the retirement of Mrs. K. P. King, a part-time officer in Dorset for nearly 30 years.

RETIREMENTS

Mr. O. S. Watkinson, clerk to Hunstanton, Norfolk, urban district council, has been forced to resign owing to continued ill-health. Mr. Watkinson has been eight years at Hunstanton, and during that time has played a large part in the development of the town and in the two flood disasters, his work during the 1953 floods resulting in the award of the O.B.E. It is thought that his recent ill-health may have been due in part to the long hours he had worked in his spare time as voluntary secretary to the local Flood Relief Committee. Mr. Watkinson, who has been in local government service for almost 25 years, relinquished his post at the end of February.

Mr. W. G. Bullock is retiring at the end of March as clerk to Erpingham, Norfolk, rural district council.

Mr. Herbert Lamb has retired from his post as governor of Dorchester prison, after 34 years in the service of the prison, the last seven as governor.

PRACTICAL POINTS

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1.—Children and Young Persons—*Contribution order and fit person order—Revocation of contribution order—Venue for proceedings.*

In June the magistrates for the petty sessional division of X convicted a young person of larceny and made a fit person order. On application at the hearing of the county council a contribution order was made against his father F and included as an appropriate paragraph in the fit person order.

At all material times F has resided in the nearby borough of Z. Recently in default with his payments the county council brought him before the magistrates at Z when it was discovered that he was not the actual father of the boy, and consequently the contribution order should not have been made against him. The magistrates at Z then declined to revoke the contribution order considering that this was a matter which should be dealt with by the justices for the division of X where the order was made.

F now proposes to apply to the justices for the division of X to revoke the contribution order. The county court maintain that F's application should be made to the justices at Z, for which they rely on s. 87 of the Children and Young Persons Act, 1933. The clerk to the justices at X considers that the application should be made at X under s. 84 of the 1933 Act.

They both agree that enforcement of the order is properly made at Z where F resides. Very shortly the county council consider the fit persons order and the contribution order are two separate orders, again relying on the wording of s. 87. The clerk to the justices at X considers that the court made one fit person order and any dealing with the matter of contribution whether revocation or variation (but not enforcement) is merely an application to vary the fit person order; and made in just the same way as an application would be to vary or revoke any other provision in the same order.

It seems clear that the application by F can only be heard at either X or Z, *i.e.*, it is not possible for both to have jurisdiction. No question will arise on the merits of the application which the county council do not intend to oppose. Before which court do you consider F should make his application ? SOTHER.

Answer.

In our opinion the venue is Z. The contribution order is a separate order which could have been made upon a separate and subsequent proceeding, and not necessarily when the fit person order was made. The contribution order is described by that name in s. 87, and s. 84 and s. 87 deal separately with questions of venue. The fact that the contribution order is for convenience included in the same document as the fit person order does not affect our opinion that there are two distinct orders.

2.—Guardianship of Infants—*Children born before marriage of parents to one another and not legitimated.*

We act for a married woman who has instituted proceedings against her husband on the grounds of his adultery and who has also taken out a summons under the Guardianship of Infants Act in respect of two children born prior to her marriage, of which her husband is the father. At the time when the children were born, our client's husband was not divorced from his former wife and consequently the subsequent marriage could not legitimize the children. We are of the opinion that the magistrates' court, having regard to the decision referred to by the metropolitan magistrate can not make an order under the Guardianship of Infants Act in respect of the two children. SARTO.

Answer.

The decision of the learned magistrate was given in 1945. Now, the position is made clear by *M.* v. *M.* [1946], p. 31, *sub nom. Millard* v. *Millard and Addis* [1945] 2 All E.R. 525, and *Colquitt* v. *Colquitt* [1947] 2 All E.R. 50; 111 J.P. 442, which decided that orders as to custody could be made in the case of a legitimated child even though there had been no declaration of legitimacy.

In the present case, however, as stated in the question, the children could not be legitimated but remain illegitimate. It is generally considered, though it has not been so decided, that the Guardianship of Infants Acts do not apply to illegitimate children and it does not appear that the wife can obtain any order in respect of them. It is true that there is a dictum of Denning, L.J., in *Packer* v. *Packer* [1953] 2 All E.R. 127, which is sometimes quoted as implying that he accepted a suggestion by counsel that an application under the Acts could be entertained in respect of an illegitimate infant, but the point does not appear to have been argued, and the case cannot be taken as deciding the question.

The wife cannot take proceedings against her husband for affiliation orders, *Mooney* v. *Mooney* (1952) 116 J.P. 608.

3.—Local Legislation—*Promotion of Bill—Revival of Bill withdrawn after poll.*

In January, 1952, a poll was held in respect of a private Bill initially promoted by the council, but the result was against the promotion of the Bill and in accordance with s. 255 (2) of the Local Government Act, 1933, the council had to take all necessary steps to withdraw the Bill. The question has now arisen whether the council should revive the provisions of this private Bill. Whilst it seems reasonable to suppose that there is some time limit before which a private Bill once defeated at the poll cannot be revived, I can trace no statutory authority for this supposition. Would you say that, as almost three years have expired since the first promotion of the Bill, the council are at liberty to initiate it again under s. 255 of the Local Government Act, 1933 ? ENBRIDGE.

Answer.

The council are not subject to a statutory barrier. They will obviously be open to attack by the interests, whatever these are, who defeated the former Bill, and, even if the council succeed at the poll this time, those interests may be able to secure support in Parliament upon the ground suggested in the query. It might be prudent to wait longer, but it is not obligatory.

4.—Magistrates—*Jurisdiction and powers—Mitigation of penalties—Town and Country Planning Act*, 1947 *and reg.* 9 (1) *Control of Advertisement Regulations*, 1948.

Section 32 (3) of the 1947 Act provides that, without prejudice to any provisions in the Control of Development Regulations, if any person displays an advertisement in contravention of the provisions of the regulations he shall be guilty of an offence and liable on summary conviction to a fine of such amount as may be prescribed by the regulations *not exceeding* £50. Regulation 9 (1) provides that the amount of the fine to which a person who displays an advertisement in contravention of the regulations *is liable* on summary conviction under s. 32 (3) is £50.

I shall be glad of your opinion on whether reg. 9 (1) is mandatory so that a court of summary jurisdiction has no alternative on convicting other than to impose a fine of £50. It seems to me that this is the intention of reg. 9 (1) since otherwise the words of s. 32 (3) would have been used, *i.e.*, " not exceeding £50."

There were cases on a similar point to this with regard to mandatory penalties imposed in respect of the breach of certain defence regulations. S. BOND.

Answer.

Section 27 (1), Magistrates' Courts Act, 1952, provides that unless an Act passed since December 31, 1879 provides *expressly* to the contrary a court may impose a penalty less than an amount specified in any enactment passed before the commencement of the 1952 Act. There is no such express provision in reg. 9 (1).

5.—Magistrates—*Practice and procedure—Committal for trial to wrong quarter sessions—Remedying the mistake.*

I have been interested to read your reply to P.P. 7 on p. 720 of the *Justice of the Peace* for November 13, 1954. I have had experience of a similar case in this county and I then took the view that as the original committal was a nullity it could be completely disregarded and the committing justices could re-commit the prisoner to the correct court. In the case to which I refer the clerk to the justices went further than this and took fresh depositions before fresh justices. It seemed to me however that the original justices were not *functi officio* and I think *R.* v. *Norfolk Justices* [1950] 2 K.B. 588, although dealing with a s. 29 committal, lends support to the view that where, through some error, justices have not properly disposed of a case, they have not exhausted their powers and can take all proper steps to dispose of the case at a later date. J. TITUS.

Answer.

The case quoted (reported as *South Greenhoe JJ., ex parte Director of Public Prosecutions* at [1950] 2 All E.R. 42; 114 J.P. 312) deals with a case which had been tried summarily, and in which a conviction had been recorded. In that case only the magistrates' court could sentence, and the High Court decided that they must complete their determination of the case by passing sentence. This could be done, by virtue of s. 98 (7) Magistrates' Courts Act, 1952, by a bench constituted differently from that which convicted, and no difficulty *could* arise, therefore, if the same magistrates were not available.

In the case of a committal for trial (which may be by one justice) only the justice or justices who heard the evidence can commit for trial, and if such justice or justices be not available the procedure

suggested of " re-committing " to the proper quarter sessions without taking evidence cannot be followed. Moreover witnesses and prosecutor have been bound over to attend at the quarter sessions to which the justices, in error, committed. How is this to be corrected ? If the accused is unwilling to appear again before the justices unless compelled, legally, to do so, what process can the justices issue to compel his appearance for " re-committal "? It is clear that nothing is laid down to cover this, and we adhere, therefore, to our previous answer, and the solution seems to be proved by the case we referred to therein.

6.—Nuisance—*Smoke—Hospital furnace.*

At hospitals, controlled by regional hospital boards, the chimneys in connexion with boiler plants used for generating steam for space heating, cooking, and other purposes, in some cases emit smoke in such quantity as to be a nuisance. May a local authority adopt statutory action and institute proceedings under the Public Health Act, 1936, or, in London, under the corresponding provisions of the Public Health (London) Act, 1936, in respect of a smoke nuisance at a hospital ?

Attention is drawn to the provisions of s. 12 of the National Health Service Act, 1946. EVENS.

Answer.

In our opinion, no. Sections 12 and 13 do not seem to us to enable them to do so. The hospital vests in the Minister by s. 6, and the remedy for a smoke nuisance is s. 106 of the Public Health Act, 1936, or s. 154 of the London Act.

7.—Public Utilities Street Works Act, 1950—*Manhole covers—Obligation to bring up to altered street level.*

County council A, as highway authority, are using up-to-date machinery for re-surfacing country roads in a rural district. The machinery involves laying a carpet of tarmacadam on the surface of the carriageway to a thickness varying from a quarter of an inch to three inches. The work involves certain difficulties where boxes and manhole covers belonging to public utility undertakings such as waterworks, electricity boards, gas boards, rural district council sewerage undertakings, etc., are concerned. The simplest technical method of overcoming the difficulty is for the machinery to lay a carpet of tarmacadam over the manhole cover, which is subsequently uncovered and raised to the level of the new carpet.

In boroughs and urban districts there is no doubt that the cost of raising the manhole cover is properly borne by the highway authority. This follows s. 308 of the Public Health Act, 1875. That section, however, does not apply to rural districts, and consequently it has been suggested that the undertaking should be responsible for the cost. It would be appreciated if an opinion could be given as to whether the undertaking concerned can claim the cost of raising the manhole cover against the highway authority.

I should point out that roads in rural districts are repaired under the provisions of the Highway Acts, 1835, 1862, and 1864, and consquently the provisions of s. 39 of the Local Government Act, 1929, would not appear to apply to the repair of such roads.

I should also mention that s. 21 of the Public Utilities Street Works Act, 1950, defines " authorities' works " for the purposes of the compensation provisions of s. 22, and among the works coming within that definition are works resulting in the " substantial alteration of the level " of a street. It is not considered that the work described above is a substantial alteration within the meaning of the Act. It would be interesting to hear whether this opinion is generally held.

PAVOC.

Answer.

The liability for alteration of level so far as statutory undertakers' works are concerned is governed by the Act of 1950 in respect of all highways whether in urban or rural districts. If the alteration in level does not affect the manhole as to access, then it will not in our opinion be substantial, but if it is necessary to raise the level of the cover it will be. If there is a depression which does not affect the access to the manhole but is a danger to the public, the county council will be liable for a misfeasance and, as the sewer authority are not under an obligation to the public to raise their manhole, and would have no necessity to do so for their own purposes, the county council will be compelled to be co-operative.

8.—Road Traffic Acts—*Road and Rail Traffic Act*, 1933—*Keeping records—Driver failing to carry record—Appropriate regulation.*

The inspector of police has requested that a summons be issued under reg. 6 and 7 of the Goods Vehicles (Keeping of Records) Regulations, 1935, and s. 16 of Road and Rail Traffic Act, 1933, against a lorry driver for failing to carry a current record. I have suggested that the driver should be charged under reg. 8 of Goods Vehicles (Keeping of Records) Regulations, 1935, but the inspector informed me it has always been his practice to proceed under regs. 6 and 7.

Shaw's Form appears to support the contention that charges for failing to carry records should be proceeded under reg. 8.

I shall be glad of your opinion hereon. JUTTON.

Answer.

Regulation 8 is the only one which deals with the driver's duty to *carry* the record, and it is, therefore, the one under which a charge of failing to carry the record should be brought.

9.—Town and Country Planning—*Conditional planning approval—Outstanding claim to compensation.*

A developer acquired a building site capable of accommodating 24 houses, and applied to the appropriate planning authority for planning approval to the development proposals in accordance with the Town and Country Planning Act, 1925. The planning authority required the development of the site to be such that space must be left for a proposed by-pass road of 100 *ft.* width. The developer then fully developed the site leaving the space required for the by-pass road. The specified area of land has, since the development, been left unfenced and open to the free and uninterrupted passage of the general public and of vehicles for a period exceeding 20 years. In correspondence between the planning authority and the developer, the latter was advised that he would be entitled, in due course, to claim compensation for injurious affection. This advice appears to have been given under s. 10 of the 1925 Act. The right to claim compensation is deferred by the 1925 Act until after the approval of the development plan made under that Act. It appears that s. 54 (1) (*b*) of the Town and Country Planning Act, 1932, continues the right of the affected developer to make his claim within the prescribed period after the approval of the development plan. The planning authority did not in fact deposit a draft development plan with the Minister before 1948, and under the Town and Country Planning Act, 1947, the planning of the district was transferred from that planning authority to the county planning authority. The county council has now deposited a development plan with the Minister under the 1947 Act and is awaiting the Minister's decision. In this development plan, the proposed by-pass road is still shown.

(*a*) Has the developer retained his right to claim compensation for injurious affection in respect of the land reserved for the by-pass road, providing he submits it to the planning authority within the appropriate period of the approval by the Minister of the county development plan ?

(*b*) If the estate developer is entitled to compensation in this case, is the amount payable by the local planning authority, *i.e.*, the county council ? ALTEM.

Answer.

In our opinion, yes to both questions: Town and Country Planning (Transfer of Property) Regulations, 1948, No. 1236.

10.—Water Act, 1945—*River boards—Works of water undertakers.*

Paragraph 19 of sch. 3 to the Water Act, 1945, contains provisions empowering the undertakers to lay water mains and sub-para. (2) provides protection for a land drainage authority where a proposed main will cross or interfere with any watercourse or works vested in or under the control of such an authority. The term " land drainage authority " includes a river board (Water Act, 1945, sch. 3, para. 1 (1); Land Drainage Act, 1930, s. 1; River Boards Act, 1948, sch. 3, para. 1). Paragraph 93 of sch. 3 contains wider protective provisions, in a different form from those in para. 19 (2), for the benefit of, *inter alia*, a navigation authority and a catchment board, in relation to any works of water undertakers: in a river board area the expression " catchment board " is to be read as " river board." (River Boards Act, 1948, sch. 3, para. 1.) By virtue of an arrangement made under s. 40 of the Land Drainage Act, 1930, or of an order made under s. 8 of the River Boards Act, 1948, some river boards are also navigation authorities, within the meaning of that expression as defined in para. 1 (1) of sch. 3 to the Water Act, 1945.

Would you agree that, assuming sch. 3 code has been applied to water undertakers, the position is as follows :

(*a*) in relation to a water main to be laid by the undertakers so as to cross or interfere with the " main river " or any land drainage works of a river board, para. 19 (2) of sch. 3 applies;

(*b*) in relation to any works of the undertakers, other than a water main, which will interfere with the " main river " or any land drainage works of a river board, para. 93 of sch. 3 applies:

(*c*) in relation to any works of the undertakers, including a water main, which will interfere with a river under the navigation jurisdiction of a river board, or with the navigation works of a river board, para. 93 of sch. 3 applies.

It is to be observed in passing that an internal drainage board enjoy the protection of para. 19 (2) but not of para. 93. PAID.

Answer.

We agree.

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